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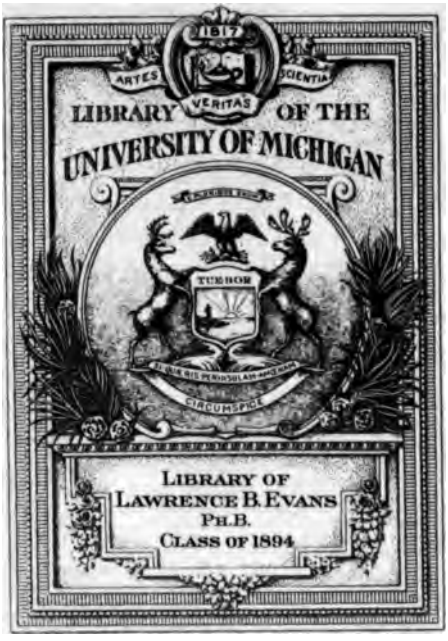
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GOVERNMENTS AND PARTIES IN CONTINENTAL EUROPE

BY

A. LAWRENCE LOWELL

IN TWO VOLUMES

VOL. II



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GOVERNMENTS AND PARTIES IN CONTINENTAL EUROPE.

CHAPTER VII.

GERMANY: THE WORKING OF THE FEDERAL GOVERNMENT.

After having surveyed the political structure of the Empire and the States, we are in a position to examine the actual working of the federal government. This may be said to turn upon the relation of the Chancellor to the three organs of the Empire; for, like a central wheel that is geared to all the others, the Chancellor comes into direct contact with each of the imperial authorities. The subject may, therefore, be conveniently treated under two heads: first, the relation of the Chancellor to the Emperor; and second, his relation to the Reichstag; his relation to the Bundesrath having already been considered while dealing with the organization of that body.

Actual working of the government depends on the relation of the chancellor to the other federal authorities.

It is clear that the Chancellor would occupy an absurd position if he were confined to the matters that belong strictly to his office, for he would be the sole

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It is clear that the Chancellor would occupy an absurd position if he were confined to the matters that belong strictly to his office, for he would be the sole

responsible minister of one of the greatest nations in the world, and yet his powers would be insignificant. Apart from foreign affairs, the navy, and the selection of a few of the highest military officers, his executive duties would be almost entirely limited to watching over the administration of the imperial laws by the several States, and seeing that they complied with the ordinances and regulations issued, not by him, but by the Bundesrath. In regard to legislation, moreover, his very lack of executive powers would prevent his exerting an effective control. Representing in his capacity of Chancellor neither the King of Prussia nor the confederated sovereigns, he would be unable to acquire any considerable authority in the Reichstag or the Bundesrath. He would, it is true, preside over this last body; but simply as chairman he would be in a situation not much better than that occupied by the Vice-President in the Senate of the United States. Unless he could also speak in the name of Prussia, and cast her votes, he would have very little influence with the members, and could neither guide legislation nor direct the policy of administration. In order, therefore, that the Chancellor may be a real minister of state, and not a mere ...stor and honorary chairman, he must be at the h... of the Prussian delegation in the Bundesrath. ... the delegation receives its instructions from the ...n government, and it would be irrational for ...hancellor to be given instructions by men whose ...iffered from his own. Hence he must be in

His relation to the Emperor.

The imperial and royal governments must be conducted by the same man.

absolute accord with the Prussian government, so far as these instructions are concerned. Nor is this all. The friction between the Chancellor and the Prussian cabinet would be intolerable if the latter were to administer the imperial laws in a hostile spirit; and indeed the relations between the Empire and the Kingdom are so interwoven that the machinery of state can work smoothly only on condition that both governments are conducted in perfect harmony, and this can be true only in case both are directed by a common will. Now, in view of the fact that the Chancellor is the sole head of the imperial administration, while the Prussian ministers are seldom completely united, it is hardly conceivable that they should be able as a body to control his actions; and if one of their number should acquire a predominant influence in the state, he would find it almost impossible not to take the chancellorship. The common will must therefore be that of the Chancellor himself, who must also be the leader of the Prussian cabinet; unless perchance the whole government is directed by the Emperor in person. Let us consider this alternative a moment.

It may be the Chancellor.

If the Chancellor is also at the head of the Prussian cabinet, and is a man of any great personal force, he is likely to eclipse his imperial master, and concentrate all political power in his own hands; for he has a right to appear and speak in four different legislative bodies, — the Bundesrath, the Reichstag, and the two Prussian houses, — and he can easily play them off against each other and against the crown. In fact, he can hardly help doing so,

because he is obliged to conciliate all these bodies, and to modify his measures so as to obtain their approval; while the Emperor cannot appear in any of them, and must to a great extent accept his minister's statement of their temper and opinions. This was the actual situation under the rule of Prince Bismarck, who held both offices continuously, except for the one year when he resigned the post of president of the council in Prussia, only to take it again, declaring that he had hoped to carry on the government as Chancellor, but found that his power was chiefly exercised as head of the Prussian ministry. His influence with William I. became irresistible, and he drew all the threads of politics into his own grasp. His resignation in 1890 was, indeed, precipitated by the young Emperor's demand that the reports of the Prussian ministers, instead of passing through the Chancellor's hands, should be presented directly to him, and that he should be informed of important interviews with the leaders in the Reichstag.

Or it may be the Emperor.

Up to this time, the common will had been that of the Chancellor; but now the second alternative was tried, the management of the whole government by the Emperor. William II. had determined to undertake the personal direction of public affairs, and he selected as Bismarck's successor von Caprivi, a Prussian army officer, who was expected to be more subservient to the throne.

Experiment of William II.

At first, like his predecessor, the new Chancellor was also given the post of president of the Prussian council, but he held both offices only a

couple of years, for, owing to the crisis that arose over the school bill in the spring of 1892, he resigned as Prussian minister, although he still retained the position of Chancellor. One cannot help feeling that the young monarch saw how much his personal authority would be increased by a separation of these offices, and how much easier it would be to control a number of ministers, each responsible for the conduct of a single department, than one man who held in his hands all the reins of government.

Difficulties that arose.

The Emperor's policy certainly increased his own authority and lessened that of the Chancellor. This result was, of course, due chiefly to the absence of Bismarck, for no other man could hope to win the reputation of the great statesman who had created the Empire. A spell, moreover, had been broken by his fall. For a moment all Germany held its breath; but finding that the heavens did not crumble, it concluded that neither he nor any one else was essential to the salvation of the country. The separation of the imperial and Prussian ministries, however, contributed also to the result, and for a simple reason. The chancellorship ceased to be the great office it once had been. Its possessor could not appear in the Reichstag in the same commanding way as the representative of all the powers in the state; and his resignation no longer entailed such serious consequences as it did formerly. His prestige was diminished, and he was neither to be revered nor dreaded as of old. The same thing was true of the relation of the Prussian cabinet to the Landtag. The great minister had been divided in two,

and neither half was big enough to treat the representatives of the people in the old autocratic manner. The Emperor, it is often said, became his own Chancellor and Prime Minister so far as directing the policy of the government was concerned, and this was in great measure true; but he could not appear in the Reichstag or Landtag and exert his personal influence as Bismarck used to do. He was compelled to work at arm's length, and was unable to bring a direct pressure to bear upon the chambers, and hence the parties there became more unmanageable than ever. It was not long before the separation of the chancellorship and the presidency led to another difficulty. The holders of these two positions, General von Caprivi and Graf zu Eulenburg, were in the nature of things rivals, who were under no necessity of reconciling or concealing their differences; and hence it is not surprising that in the autumn of 1894 they were so completely at variance with each other on an important question of policy that they could no longer work harmoniously together. The Emperor wisely dismissed them both and conferred both offices on Count Hohenlohe-Schillingsfürst, thus giving up, for the time at least, his attempt to ride two horses with nothing to hold them together but his own word of command.

Imperial system not well adapted to direct personal government by the crown.

It would seem, therefore, that if the chancellorship and the presidency are held by different persons, the difficulties of carrying on the government are great; and if, on the other hand, they are held by the same man, he is liable to overshadow the crown. The fact is that

although in organizing the Empire Bismarck had no thought of making it easy to control the Emperor, he did intend to accumulate as much power as he could in his own hands, rendering it impossible for any colleagues to thwart his plans, and with that object he created for himself an office whose counterpart exists in no other Christian monarchy. All this does not mean a limitation of the monarchical principle, because the Emperor is absolutely free to select the Chancellor, and hence can determine the policy to be pursued. It means only that, as the government is organized, it is hard for him to take the immediate direction of affairs into his own hands; and yet this appears to be exactly what William II. wishes to do.

The relations of the Chancellor to the representatives of the people are no less important than his relations to the Emperor. A parliament that holds the strings of the public purse, and meets with tolerable frequency, has in its hands the means of compelling the monarch through his ministers to govern according to its wishes, and whether it does so or not depends very much on the condition of its political parties. If the members are divided into two parties only, so that one or other of them always has a majority, the parliament is certain in time to bring the crown under its control; but if, on the other hand, there are a number of small groups, it is much easier for the government, by making from time to time special concessions to one or more of them, to secure a majority on all important occasions, and thus remain independent. This is the case in Germany, and a study of

The relation of the Chancellor to the Reichstag.

the history of parties there will help to make the matter clear.

History of parties in Germany.

The bitter conflict between the King of Prussia and the House of Representatives, which reached its height shortly after Bismarck became chief of the cabinet in September, 1862, and lasted for the next four years, consolidated the different political elements in the Chamber into two hostile bodies, — the supporters and the opponents of the government. The former, who shrunk at times to a mere handful of members, were called the Conservatives, while their enemies belonged for the most part to a new organization known as the *Fortschritt* or party of progress. The decisive victory over the Austrians at Sadowa wrought a sudden change in public opinion. Instead of the tyrannical despiser of popular rights, Bismarck appeared in the light of the champion of German unity and even of liberty, and the result was a breaking up of the old party relations and a rearrangement of the political groups on a new basis.[1] The Conservatives, who had supported the government, ceased to be unpopular, and regained the seats they had lost; but, what is more important, each of the great parties split in two. A number of the Conservatives, who were more progressive in opinion than their fellows, and more in favor of the new federal system, left the party to organize another under the name of Free Conserva-

The Conservatives and the Fortschritt, 1862–66.

Effect of the war with Austria.

Rise of the Free Conservatives and National Liberals.

[1] See the articles on the parties in the Reichstag in *Unsere Zeit*, by Oppenheim (1880, i.) and Johannes Berg (1882, i., ii.; 1883, ii.).

tives;[1] and, on the other hand, a body of men, including the most influential leaders, separated themselves from the Fortschritt, and formed the National Liberal party. These men were less dogmatic than their former associates, were more inclined to sacrifice the ideal for the practical, and, above all, had more confidence in Bismarck.

Thus two new middle parties arose, the four groups corresponding fairly well to the four divisions into which, according to the theory of Röhmer,[2] all mankind is naturally divided, — the Reactionaries, the Conservatives, the Liberals, and the Radicals. Each of the four has continued to exist under one name or another ever since the formation of the North German Confederation; for although some of the members have often broken away and formed new groups, these have disappeared after a short time, or been absorbed by one of the older bodies. It is therefore worth our while to consider these parties a little more closely. The two extreme ones — the Fortschritt and the Conservative — were almost exclusively Prussian, the Conservatives being recruited chiefly among the lesser nobility or *Junkers*, and the Fortschritt in the larger towns and cities. The Free Conservatives also came mainly from Prussia, the core of the party being the greater nobility, from whom the ambassadors and other high officials were mostly selected. The National Liberals, on the other hand,

[1] Called later the *Deutsch-Reichspartei*.

[2] *Lehre von den Politischen Parteien*. Cf. Bluntschli, *Charakter u. Geist der Pol. Parteien*.

extended far more into the other States, and included during their era of prosperity almost all the deputies from the smaller North German States, and most of the men of liberal views from the South. This has been, indeed, the only truly national party that the Empire has ever known, all the other groups being mainly local, or founded on questions of sect or of race, rather than on general political issues.[1] Of the latter class are the Catholic party or Centre (which will be more fully described when we come to the time of its rise), and the various kinds of particularists so called. These last are irreconcilables, who complain that their province or their race has been unjustly treated, and has been forced into a union repugnant to its feelings. The most important of them are the Poles, the Hanoverian Guelphs, the Danes, and the Alsatians, all few in numbers, but uncompromising fighters. The only other party that can make any claim to be considered national is that of the Social Democrats. Small at first, this body has grown rapidly of late years, and with the increase of power has come greater moderation; but recruited as it is from the discontented classes in the large cities, it is still too far removed in its aims from the field of actual politics, and too thoroughly unpatriotic in its utterances, to be considered a really national party.[2]

The Centre.

The Poles, Guelphs, Danes, and Alsatians.

The Social Democrats.

[1] Cf. Lebon, p. 128 *et seq.*

[2] When the North German Confederation was founded, there were a few other groups, such as the Old Liberals and the Left Centre, but these soon disappeared. From time to time other groups appeared, such as the Liberal *Reichspartei* and the Southern Democrats, but most of them have had no permanent importance.

It is worth while to observe here that the parties in the Prussian Landtag have always been similar to those in the Reichstag — except, of course, for certain groups like that of the Alsatians, which belong exclusively to other parts of the Empire, and do not appear at all; and, in general, it may be said that in each State the parties for national and local politics are very nearly the same, so that every party in the Reichstag corresponds to a local party in one or more of the States, and every considerable local party appears in the Reichstag either as a separate group by itself, or as part of a larger organization. It is not, however, possible to say that the parties are divided as in France, on national issues, or, as in Italy, on local ones, because neither class of issues has a predominant influence; and, in fact, owing to the peculiar apportionment of power between the federal government and the States, the same question, as, for example, that of the rights of the Catholic church, is constantly presented both in the Reichstag and in the state legislatures.

Parties in the state Landtags.

During the earlier years of his chancellorship Bismarck relied for support chiefly on the two middle parties, the National Liberals and the Free Conservatives, while the extreme groups — the Fortschritt and the Conservatives — were in a position of more or less hostility. But in saying this it must be borne in mind that in Germany the parliamentary system does not exist, and hence no party consistently supports or opposes the ministry as it does in England. No one of

Bismarck's relation to the parties during the earlier years of the Empire.

these four parties was at this time avowedly hostile to the Chancellor, and none of them ever supported him with a blind devotion, even the Free Conservatives, who aspired to be his parliamentary body-guard, occasionally voting against his measures. As for the National Liberals, they always criticised and amended his bills with great freedom, and often forced him to accept a compromise. For some time, indeed, after they were heartily in sympathy with his national policy, they remained intractable in the Prussian Landtag, on account of his retention of the old reactionary ministers of state.

Bismarck saw that the new nation must be founded on liberal principles, and as soon as the war with Austria was over, he adopted a progressive policy. Not only was this true of his imperial plans, which led to the enactment during the first three years of a number of excellent laws, but before long he began to drop one by one the most reactionary Prussian ministers, replacing them by men of more liberal views. Up to the time of the close of the war with France, matters went smoothly; for although some of the groups disagreed with many of Bismarck's measures, yet, except for the handful of particularists, he had no bitter enemies until he became involved in that unfortunate contest with the Catholic church, which has become famous under the name of the *Kulturkampf*. It is idle to attempt here to apportion the blame for a struggle that has proved a great injury to Germany. That Bismarck's policy was a mistake few people will now deny, for he raised a spirit which he

The Kulturkampf.

was unable to quell, and which has continued to disturb politics seriously to the present day, although its cause was almost entirely removed long ago. As usual, in such controversies, it is hard to say which side began the aggression. It is clear, however, that the doctrine of papal infallibility and the taking of Rome by the Italian government furnished the occasion, if not the veritable cause, of the strife. No sooner had Pius IX., in the summer of 1869, issued his call for a general council, than the priests began to assume an aggressive attitude, which provoked opposition among the people, and soon brought religious questions into the political arena. There had always been a few ultramontane members in the Prussian Landtag, but in the autumn of 1870 they carried for the first time a considerable number of seats. They organized forthwith a regular party, which showed its real character by sending to the Emperor, on February 18, 1871, an address urging him to endeavor to reëstablish the temporal power of the Pope. A fortnight after this date the elections to the Reichstag were held, and the clericals, helped by the exertions of the priests, succeeded in choosing about sixty deputies. The new party, which acquired the name of "The Centre" from the seats it occupied in the chamber, proclaimed definitely at the very opening of the session the attitude it intended to assume, by refusing to vote for the address to the crown on account of a clause condemning interference in the affairs of foreign countries, — a clause designed to prevent any action in favor of the Pope. Meanwhile the bishops had been trying to force their

The formation of the Centre.

clergy to accept the dogma of papal infallibility, and by so doing had got into trouble with the government and aroused popular feeling. All this led to active hostility between the Catholic church and the state, and in the autumn of 1871 the latter took its first decisive step.

The anti-Catholic laws.

The government of Bavaria, which had long been struggling with an unfriendly clerical majority in the diet, proposed in the Bundesrath a statute to restrain the abuse by priests of pastoral functions for political purposes. This measure, known as the *Kanzelparagraph*, was passed both by the Bundesrath and the Reichstag, and became law. It was followed early in the next year by a Prussian school inspection law, reducing seriously the influence of the clergy in education. The conflict had now become a war to the knife. The bishops assembled at Fulda, and protested violently. The Pope supported them, and excommunications were hurled at rebellious sons of the church. Bismarck, on his side, was determined to persist to the utmost, and, in allusion to the humiliation of Henry IV. before Hildebrand, made at this time his famous remark, that he should not go to Canossa. In June, 1872, an imperial statute excluded the Jesuits and all other kindred orders from the territory of the Empire; and in May of the following year the Prussian Landtag passed the celebrated May laws, whose chief objects were to limit the disciplinary power of the church over its members, and to place the education and installation of the clergy under the control of the government. Again the bishops met at

Fulda, and this time they declared boldly that the laws of the state were not the ultimate source of right, and ought not to be obeyed if contrary to the laws of God. Acting on this principle, they ignored the May laws; whereupon the severity of those laws was still further increased, and an imperial statute was passed authorizing the expulsion of ecclesiastics who had been removed from office for violation of their provisions.[1] Finally, in 1875, an encyclical letter of the Pope to the Prussian bishops, declaring all the anti-Catholic legislation invalid, provoked the government so much that it brought into the Landtag and enacted five more statutes, of which the most important forbade all payments to the clergy from the state treasury without a promise on their part to obey the laws.

These were the last important Kulturkampf laws; but, like all the others, they failed to accomplish their object. Some of the clergy did, indeed, submit; but most of them followed resolutely the lead of the bishops, who persisted in their refusal to comply with the laws in spite of fines, imprisonments, and removals from office. The statutes were rigorously enforced, and before long eight of the twelve Prussian bishoprics, and no less than fourteen hundred curacies, were vacant; but all without avail. In the field of politics the result of Bismarck's effort to break down clerical opposition was even less satisfactory; for at the elections to the Reichstag in 1874 the Centre carried about a hundred seats, and in the

The effect of the Kulturkampf on the Centre.

[1] This was in 1874. In this and the following year laws were enacted by Prussia and the Empire making civil marriage compulsory.

Prussian Landtag it increased steadily until it had nearly that number of members. During the progress of the Kulturkampf, the party was, of course, bitterly hostile to the government; but, although it had been built up in the heat of persecution, its strength remained undiminished after the conflict was over, and indeed its discipline is so much more perfect than that of any other party in Germany that alone among them all the number of its members has hardly varied through all the subsequent changes in German politics.[1]

Its effect on the Conservative party.

The effect of the Kulturkampf on the other parties was hardly less important. A great part of the Conservatives had been alienated from Bismarck by the liberal policy he had pursued since the war with Austria, but their attitude was converted into one of positive hostility by the conflict with Rome. These men bore a relation to the Protestant church similar to that of the Ultramontanes towards the Catholic, and were by nature averse to any attack on established religion. Moreover, some of the measures of the government affected them directly; for in the year 1872 there were enacted the Prussian school inspection law, which lessened the influence over education of the Protestant as well as the Catholic clergy, and the Kreis-Ordnung, which destroyed the absolute control hitherto exercised by the nobility in local affairs. At the end of this year Bismarck resigned his place as chief of the Prussian ministry, on

[1] The Centre is, of course, recruited from the Catholic parts of Germany, and chiefly from Hanover, Westphalia, the Rhine Province, and Bavaria.

the ostensible ground that his manifold duties were too great for his strength. He said, however, in a letter to his successor, General von Roon, that he was discouraged by losing the friendship of the Conservatives; and Dr. Blum shrewdly suggests that his real motive may have been a hope that von Roon, who was sincerely attached to him, and at the same time in close sympathy with that party, would be able to win its support. In this hope he was disappointed; for in less than a year von Roon, finding himself responsible for a policy of which he did not really approve, withdrew from public life. Bismarck, anxious to avoid an open breach with the Conservatives, offered a portfolio in the Prussian ministry to von Blankenburg, the leader of the party; but the offer was declined, and the Chancellor again assumed the presidency of the Prussian cabinet. From this time the more extreme Conservatives gave full vent to their animosity. They intrigued to upset Bismarck, and put in his place Count Harry von Arnim, the ambassador at Paris, who helped them by a clandestine publication of secret diplomatic papers. Bismarck's peril was very great, for the Emperor was personally more in sympathy with the policy of the Conservatives than with that of his Chancellor, and an influential court clique, headed by the Empress Augusta, was bent upon his overthrow. This explains the vindictiveness with which he pursued von Arnim, until he brought about his condemnation and ruin. The Emperor, however, in spite of his natural sympathies, remained true to Bismarck; but the hostility of the high Conservatives became more bitter than ever, and their organ, the

"Kreuzzeitung," did not hesitate to accuse him and his colleagues of downright corruption. Thus the Chancellor was at war with the party from which he had sprung, and whose champion he had been during the earlier part of his career. The immediate result was more injurious to his enemies than to himself, for the Conservatives lost two thirds of their representatives, as they are apt to do in Prussia when they quarrel with the government.

Its effect on the National Liberals and the Fortschritt.

The effect of the Kulturkampf on the liberal parties was very different. They increased in numbers, and became more harmonious with each other and with the government, even the Fortschritt supporting the anti-Catholic laws, and being less critical than usual about other matters. The National Liberals, indeed, together with the Free Conservatives who were always faithful, had nearly one half of the members both in the Reichstag and the Prussian House of Representatives, and with the Fortschritt also they had a decided majority in each of those bodies. So long, therefore, as the Kulturkampf laws were being passed, Bismarck found the Reichstag easy to manage. But the last of those statutes had no sooner been enacted than he encountered obstacles in various directions.

After the last Kulturkampf laws were passed, Bismarck began to have trouble.

His first difficulty was not with the Reichstag, but with the Bundesrath, which rejected in 1875 an imperial railroad bill, fearing that it would cause a falling off in the profits of the railroads owned by the smaller States. In this form the measure had to be dropped.

On the other hand, it was clear that a law affecting the private roads alone had no chance of passing the Reichstag, and hence a uniform administration of the railroads was possible only in case all the more important lines were acquired by the Empire. Bismarck had this project very much at heart, but the dread of increasing the power of the central government was so great among the smaller States that he did not even venture to bring the matter before the Bundesrath, and had to content himself with a purchase by Prussia of the roads within her own territory.

The railroad bill rejected by the Bundesrath in 1875.

This was the first check he had received, but another came almost simultaneously. The National Liberals had prospered under his favor, and had reached high-water mark with over one hundred and fifty members in the Reichstag. But the sympathy between Bismarck and this part of his supporters was far from complete, for they were liberal by conviction, and he only from policy. By nature he was intolerant, and his only method of overcoming resistance was the blood and iron policy which had proved so successful in the struggle with Austria. The aggression of the Catholics and the Social Democrats irritated him beyond measure, and late in the year 1875 he brought before the Reichstag a bill to punish attacks on the state in speech or in print. Some of the clauses relating to the Social Democrats were so loose as to place excessively arbitrary powers in the hands of the government, and for that reason were popularly known as the "India Rubber Paragraphs."

His anti-socialist bill mutilated by the Reichstag.

They went too far for the National Liberals, and even for some of the more conservative members; and the Reichstag rejected them by heavy majorities, passing the bill in a very mutilated form. This was a prelude to further trouble. In the following December the Fortschritt became disgusted with a compromise made between Bismarck and the National Liberals, on the subject of trial by jury for press offenses, and fell into a condition of persistent opposition. But the question that was destined to create the greatest difficulty was that of the finances.

The Fortschritt became permanently hostile in 1876.

The Empire had a comparatively small revenue of its own, and the difference between receipts and expenses was made up by the assessment of the several States in proportion to population. Now these payments, called *Matricularbeiträge*, had grown very heavy and pressed hard upon the States, and as their amount could be determined only from year to year they were peculiarly burdensome wherever the budget was voted for several years at a time. Bismarck wanted to reduce them by increasing the sources of imperial revenue. The Liberals also wanted to increase those sources, but were not willing to lessen the influence of the Reichstag, and inasmuch as a tax once voted could not be repealed without the consent of the Bundesrath, and in fact without the consent of Prussia's delegates in that body, they insisted that an increase in federal taxation should be accompanied by the creation of an imperial minister of finance responsible to the Reichstag, — a proposal

Disagreement with the National Liberals on financial questions in 1877.

to which the Chancellor was, of course, inflexibly opposed.

At this time Bismarck became discouraged, and in April, 1877, tendered his resignation. His religious policy had injured the church without breaking her opposition; his railroad project had been defeated, and his financial plans seemed doomed to fail. Not only was the Centre bitterly hostile to him, but he had quarreled with the Conservatives, and was losing the hearty support of the National Liberals. Moreover, a party at court, headed by the Empress, was trying to undermine him, and even the ministers were not fully in sympathy with his opinions. No one, in fact, seemed to be thoroughly faithful to him except the Emperor, who refused absolutely to consider his resignation, but granted him a long leave of absence. Bismarck saw the need of a change of tactics, and made up his mind that he must either bind the National Liberals to his administration in such a way as to insure their fidelity, or seek support elsewhere. In the last days of 1877, therefore, he sent for Bennigsen, the chief of the party, explained to him his views, and offered him a portfolio in return for the support of his programme. One of the most important parts of that programme was a government monopoly on the importation and manufacture of tobacco, which Bismarck thought the best means of increasing the imperial revenues. Apart from the natural repugnance of the people to a system that would make tobacco both dear and bad, such a monopoly was disliked by

Bismarck tenders his resignation, and is given a leave of absence.

His offer of a portfolio to the National Liberals declined.

the Liberals on political grounds, because it tended to lessen the control of the Reichstag over taxation; and Bennigsen, after consulting the other leaders of the party, refused to consent to it. He also insisted that he could not accept the offer unless a portfolio were also given to Forckenbeck who, as a leader of the more radical wing of the party, was obnoxious both to Bismarck and the Emperor. These conditions prevented an understanding, and the negotiations fell through.

Bismarck's change of base.

The Chancellor gave no public sign of displeasure, and made no announcement of any change in his opinions, but gradually reversed the policy he had been pursuing ever since Sadowa. No more measures that pleased the Liberals were introduced, and after the Reichstag failed early in 1878 to agree to an increase of the tax on tobacco, which was avowedly a step towards the monopoly, three liberal Prussian ministers were replaced by men of more conservative tendencies. An accident soon helped Bismarck to lay a foundation for his new plans. An attempt to assassinate the Emperor in May of this year furnished an occasion for a bill to suppress the Socialists. It was rejected by the votes of the National Liberals in the Reichstag. Again the Emperor was shot at, and immediately the Reichstag was dissolved. These events gave an opportunity to procure a legislature of a different party coloring, and the Chancellor was not disappointed in his hopes. The Conservatives, who were anxious to get back into favor, represented themselves as the truest supporters of the government, and although

Dissolution of the Reichstag and its effects.

the latter did not acknowledge them as allies, the officials really helped their candidates. The result of the elections was a loss for the Liberals and a gain by the Conservative parties.

Still there was no open breach with the National Liberals, and the anti-socialist bill was actually carried in a modified form by their assistance; but the party relations in the Reichstag had changed radically, although no one, perhaps not even the Chancellor himself, was fully conscious of the fact.[1] The support of the National Liberals for the new policy he was contemplating was, to say the least, extremely uncertain; and as the two Conservative parties together did not make a third of the body, the Centre was likely to hold the balance of power. Meanwhile Pius IX. had died, and Leo XIII., on his accession to the pontifical throne, had made overtures of reconciliation. Bismarck was, no doubt, weary of his long fight with the church, but as usual he said nothing, bided his time, and then made one of those unexpected moves that have been characteristic of his public life. He needed the help, or at least the neutrality, of the Clericals, and determined to remove the cause of their hostility by reversing his religious policy; but for this the time was not yet ripe.

Change in party relations.

The Chancellor's first open and avowed change of

[1] It is said that in reply to a National Liberal candidate, who complained in 1876 that the influence of the officials was thrown against him, the Chancellor remarked that the National Liberals were very useful, but must not be allowed to grow too strong. (Johannes Berg, in *Unsere Zeit*, 1883, ii. pp. 402–3.) Even if this tale is not true, it probably represents Bismarck's state of feeling for a considerable period.

policy took place in economic matters. Up to this moment Bismarck, supported by the Liberals, and, indeed, by the great bulk of the Conservatives, had been in favor of free trade, and had talked of a tariff for revenue only; but he was now bent on creating a revenue for the Empire, and as his tobacco monopoly had failed, he turned his attention to customs duties as a fruitful source of income. No doubt he had really changed his opinions on the economic effects of protection, and in fact a great many people in Germany had done the same; for the prevailing depression in business was popularly attributed to free trade, and especially to the abolition of the duty on iron. In February, 1879, the Chancellor laid before the Reichstag a bill for a protective tariff, which had been prepared by the Bundesrath. Parties were at once thrown into confusion, and men who had hitherto been free-traders found themselves to their surprise voting for the bill. This was peculiarly true of the landowners who had long believed in free trade, but who were now won over by the proposal of duties on iron and grain. In general, the representatives of manufacturing and agricultural districts supported the bill, while those who came from the trading centres opposed it. On this principle, the two Conservative groups, whose members sat for rural constituencies, were strongly in favor of the measure, and for the same reason the sympathies of a large part of the Centre were on the same side; while the Fortschritt, which represented a city population, was implacably hostile. The National Liberals were

The protective tariff of 1879.

The attitude of the parties.

divided in opinion. Part of them wanted protection and part free trade, while Bennigsen, the leader of the party, supported by the moderate elements, was anxious, if possible, to keep the party together and effect a compromise. The two Conservative parties alone were not enough to carry the bill. The support either of the Centre or of the National Liberals must be secured; and as neither of these parties was willing to vote for the measure without some guarantee of the control of the finances by the Reichstag, the government opened negotiations with both of them. The terms they offered were not in substance very different, but Bennigsen could not promise with certainty that all the members of his party would follow his lead, and hence Bismarck accepted the proposals of the Centre.

The Centre votes for the bill.

By one stroke the Chancellor increased the revenues and broke the strength of the National Liberals. This party had, indeed, been thoroughly shattered. It had been formed to support Bismarck's liberal policy, and when he ceased to be liberal it fell apart like a pack of hounds when the fox doubles and throws them off the scent. A fraction broke away at once and voted for the tariff; while the rest of the members were divided into right and left wings, which were constantly bickering, and held together only until a definite occasion for a quarrel occurred.[1] Another unmistakable sign of

The National Liberals begin to break up.

[1] See the articles on the parties in the Reichstag, in *Unsere Zeit*, by Oppenheim (1880, i.), Friedrich Boettcher (1881, ii.), and Johannes Berg (1882, i. ii.; and 1883, ii.).

Bismarck's change of policy was now given, for at the close of the tariff debate all the remaining liberal Prussian ministers retired. But the National Liberals had not yet adjusted themselves to the new conditions, and were not prepared to take a definite stand as supporters or opponents of the new policy. In April and May, 1880, they voted almost solidly in the Reichstag for the prolongation of the anti-socialist law, and for the bill fixing the size of the army for another seven years. The Centre, on the other hand, which had raised Bismarck's hopes by its coalition with the Conservatives on the tariff, exasperated him by voting against these measures; and, in order to conciliate this party or undermine its source of strength, he made another change of base which marks the final transition from the old order of things to the new.

The mitigation of the May laws,

The Kulturkampf had failed to break the spirit or the political power of the Clericals, and when Leo XIII., on his election to the papacy in March, 1878, made conciliatory overtures, Bismarck was glad of an opportunity of putting an end to the struggle. The negotiations, however, came to nothing, because the Holy See would not consent to allow the installation of priests to be subject to the approval of the state. But in spite of this the Prussian ministers brought into the Landtag, in May, 1880, a bill to give to the government a discretionary power in the application of the May laws, so that they might be enforced less rigorously. The bill went too far for the Liberals, and not far enough to please the Centre; but a compromise was made with the right wing of

the National Liberals, who then voted for the measure and insured its passage. This law furnished the occasion for the final quarrel among the National Liberals. The left wing refused to vote for it; and on August 30, after the close of the session, about a quarter of the members of the party, including many of the most celebrated leaders, such as Forckenbeck, Stauffenberg, and Bamberger,[1] formally seceded and formed a new group under the name of the *Liberal Vereinigung*, or Liberal Union. The right wing retained the old name, and under Bennigsen as its leader continued to follow Bismarck in spite of his change of front; while the seceders pursued their former progressive policy.

and the final split in the National Liberal party.

Bismarck had now reversed his political, his economic, and his religious programme, and had transferred his favor from the Liberals to the Conservatives. He had not, however, succeeded in obtaining a submissive majority in the Reichstag, for the two Conservative parties, together with the remnant of the National Liberals, were still in a minority.[2] The Centre held the balance of power, and understood its advantage far too well to give its services without an equivalent. The continual mitigation of the May laws ended in their almost total abrogation, and in a complete understanding with the Vatican; but, in spite of this, the Clericals maintained a position of general hostility, and never consented to the tobacco monopoly, because, by diminishing

Bismarck fails to obtain a majority in the Reichstag.

[1] Lasker had left the party as early as March.

[2] In the Landtag these three parties together had a majority.

the power of the Reichstag, it would have lessened at the same time their own influence.

The weakening of the middle parties.

The years that followed are called by Dr. Blum the saddest period in the recent history of Germany, and certainly at no time was there less harmony between Bismarck and the representatives of the people. The annals of the Reichstag are filled with accounts of the rejection of the Chancellor's most cherished bills, and of personal wrangles between the government and the leaders of the hostile groups. This result was brought about by the weakening of the middle parties, which has been an injury to Germany to the present day. The strength and usefulness of the Reichstag from 1867 to 1878 was due to the fact that its action was controlled by a great party composed of men of moderate opinions. But after the secessions of 1879 and 1880 that party never regained the numbers and still less the influence it had once possessed, and its loss of power left the extreme elements unchecked. Hence politics tended to degenerate into a conflict between the violent parties, while struggles to promote the interests of a class or a faction took a more and more prominent place. The weakening of the middle parties was directly caused by Bismarck's change of policy. The modification of the May laws, the proposal to vote the imperial budget only once in two years, the appointment as Prussian Minister of the Interior of von Puttkamer, who used excessive official pressure at elections, and, above all, a dread of the tobacco monopoly, frightened people of moderate views so much that they turned away from

the candidates who favored the government. Hence the Free Conservatives and National Liberals lost a large number of seats to the more radical groups,[1] and what was even more important, the members of the new Liberal Union, who, as the left wing of the National Liberals, had formerly been kept in a moderate attitude by the influence of von Bennigsen, were driven to seek allies farther to the left. In 1884 they united with the Fortschritt, or rather merged into it, and, under the name of the *Deutsch Freisinnige*, or German Free-thinking party, formed a new group, which was guided by Eugene Richter, the radical leader. Thus the five old parties were substantially restored, but their strength and their relations to the government were different from what they had been before. The Conservatives were now the Chancellor's most faithful allies, the Free Conservatives almost always followed him, and although the National Liberals often voted against his bills, they, too, were counted among his supporters, while the Centre was usually and the Deutsch Freisinnige persistently hostile.

The most serious conflict during this period took place in 1887 over the bill to fix the size of the army for the next seven years, known as the septennate. The two Conservative parties and the National Liberals favored the bill, but the Deutsch Freisinnige, the Social Democrats, and all the various kinds of particularists opposed it. The fate of the measure hung upon the Clericals, and they decided to vote against it, in spite of the admonitions of the

The struggle over the septennate.

[1] This was not the case in the Prussian Landtag.

Pope, who had now reached an understanding with Bismarck. The Reichstag was immediately dissolved, and, owing to the fear of war, which was especially great in the southern States, the opponents of the septennate lost votes at the elections so heavily that the Conservative parties, together with the National Liberals, carried a majority of the seats. This seemed to be the most docile Reichstag that Bismarck had ever encountered. At his request it even lengthened the term of its successors from three years to five, and yet it was destined to be an instrument of his fall.

Election of a Reichstag favorable to Bismarck.

On March 9, 1888, the old Emperor William died, and his son Frederick, on whom the Liberals had set their hopes, was much too ill to dismiss the Chancellor and begin a different policy, even if he felt any inclination to do so. His most important act was the removal of the Prussian minister von Puttkamer, who had made himself thoroughly unpopular by using official pressure at elections. But except for this, his short reign of ninety-nine days left no permanent mark on German politics. With the accession of the present Emperor, however, a new era began, and this the Reichstag helped to inaugurate.

Death of William I., and of Frederick. Accession of William II.

One of the most difficult questions with which the government had been confronted arose from the agitation of the Socialists. Before the war of 1866 the Germans were a frugal, contented race, but after their victories they acquired a craving for material prosperity. The result was speculation among the rich,

the growth of large cities, and the development of a huge and discontented mass of workingmen, who present one of the most serious dangers for the future of Germany, — the alarming spread of socialistic doctrines.[1] Bismarck saw this danger early, and tried to meet it both by repression and by conciliation. He destroyed the press of the Socialists, broke up their meetings, and exiled their leaders from the great cities, but all without avail. In spite of his efforts, they grew in strength, and, except for the election of 1887, they carried an almost steadily increasing number of seats in the Reichstag.[2] He tried, on the other hand, to remove their grievances by adopting a form of state socialism himself. With this object he passed a series of laws on the compulsory insurance of workmen, which were gradually extended until they covered accidents, sickness, and old age, and included almost all kinds of labor. But this policy, far from satisfying the Socialists, rather stimulated their ambition.[3] From the political point of view, therefore, it has not been a success; and, indeed, the last of these laws, that on insurance against old age, which provided for a heavy contribution on the part of the state, has been so

Bismarck's unsuccessful efforts to suppress the Socialists.

His repressive measures.

His compulsory insurance laws.

[1] Cf. "Le Parti de la Démocratie Sociale en Allemagne," J. Bourdeau, *Revue des Deux Mondes*, March 1 and April 15, 1891.

[2] In 1871, they elected three members; in 1874, 9; in 1877, 13; in 1878, 9; in 1881, 12; in 1884, 24; in 1887, 11; in 1890, 35; and in 1893, 44.

[3] The Social Democrats voted against all these laws on the ground that they were insufficient, a mere sop to Cerberus.

universally unpopular among all classes, including the workingmen themselves, that for the present any further steps in this direction are improbable.[1]

The extension of the anti-socialist law rejected by the Reichstag in 1890.

Bismarck's measures for the repression of socialistic agitation were authorized by statutes of exceptional severity, which were enacted only for a limited number of years at a time, but hitherto had always been renewed before their termination. The last of them expired by its terms in the autumn of 1890, and at the end of 1889 the Chancellor presented to the Reichstag a bill more drastic than the existing law. Not only were the Centre and the Radicals opposed to the continuation of any exceptional legislation of this kind, but even the National Liberals were unwilling to vote for certain clauses which provided for the suppression of newspapers, and gave the government power to expel agitators from the cities. With their help these clauses were struck out, although Bismarck considered them important. The attitude of the Emperor on the measure is still a mystery, but it was generally believed at the time that he disagreed with his Chancellor; and it is certain that, although he held a council of ministers after the amendments had been adopted, no announcement of its conclusions was communicated to

[1] "The German Crisis and the Emperor," by L. Bamberger, in the *New Review*, April, 1892; "Le Socialism d'Etat dans l'Empire Allemand: Les Pensions aux Invalides," Ch. Grad, *Revue des Deux Mondes*, April 1, 1890.

For an adverse criticism of this law, see an article by William Bode, "Old Age Pensions: The Failure in Germany," in the *National Review*, March, 1892.

the Reichstag, and no attempt was made to effect a compromise with the National Liberals, which could probably have been done. The uncertainty about the opinion of the government, and the rumor that the Emperor was opposed to the bill, caused the Conservatives at the last moment to vote against it in its amended form, and it was rejected on January 25, 1890. The term of the Reichstag expired just at this time, and the new elections may be said to have gone against the administration; for the Cartell, as the three parties friendly to the government who helped each other's candidates were called, lost many seats to the Radical groups, and the Centre obtained once more the balance of power.

The new elections unfavorable to Bismarck.

The loss of control over the Reichstag and some differences of opinion about current politics hastened Bismarck's fall;[1] but in any case the ambitious young monarch and the autocratic old Chancellor would have found it impossible to work peaceably together much longer. So long as he remained in office, Bismarck was certain to try to hold all the reins of government in his own hands, and to insist for that purpose in keeping his colleagues in strict subordination to himself. The Emperor, on the other hand, wanted to assume the personal direction of affairs, and this he could not do if he must consult

The causes of his fall.

[1] A question arose at this time which was apparently a source of dissension, although, like all the matters connected with Bismarck's retirement, it is still wrapped in mystery. Early in February the Emperor invited the Great Powers to an international conference on the labor problem at Berlin, a step to which the Chancellor was thought to be certainly opposed.

only with the Chancellor as his one official adviser. For many months, indeed, Bismarck had found among the ministers, and still more in the case of the Chief of Staff, a lack of harmony with his views and a spirit of independence which showed a reliance on a higher protection than his own. He insisted, therefore, that in accordance with a cabinet order of 1852 all communications between the Emperor and the other ministers must be made through him. Instead of consenting, William asked for a repeal of the order. While the matter was still unsettled, the Chancellor had an interview with Windthorst, the leader of the Centre, about which false reports got abroad. The Emperor demanded an account of the conversation, but this Bismarck positively refused to give; and when words ran high he added that he should be glad to resign. To his amazement the offer was accepted, and the great statesman who had united Germany, and had held her destiny in his hand for nearly thirty years, suddenly found himself a private citizen.

The Emperor's attempt to rule in person, and stand above parties.

A change now came over the spirit of German politics, and the centre of interest shifted from the Chancellor to the Emperor, whose personality became a decisive factor in affairs of state.[1] Bismarck was succeeded by General von Caprivi, a soldier rather than a statesman, whose object was to carry out his master's wishes instead of ruling in his name. Before long the

[1] There is a valuable criticism on the Emperor's policy by G. Valbert, in the *Revue des Deux Mondes* (March 1, 1892), "L'Empereur Guillaume II., ses Ministres et sa Politique."

other ministers were almost all replaced by new men; and it is worthy of notice that these men were not selected from any one political party, but represented, on the contrary, quite different opinions, for the Emperor not only wanted to keep each of the ministers strictly dependent on himself, but intended also to stand outside of and above all the parties in the country. In accordance with this idea, he made no attempt to form a solid party in the Reichstag to support his policy, and trusted to chance majorities or special coalitions to carry each measure, a practice which has not proved altogether satisfactory.

The army bills of 1890 and 1891.

The fall of Bismarck caused at first a lull in the strife of factions. His dismissal was, indeed, a step so extraordinary and so bold that no one knew what change of policy it might portend; and although the Emperor declared that the course of the government would remain unchanged, the fact that the anti-socialist laws with their restrictions on the press were allowed to expire encouraged even the advanced Liberals to hope that they might be destined to enjoy the favor of the court. Their illusions were not of long duration. Shortly after the Reichstag met, they voted against a bill to increase the strength of the army, which was, however, carried by the help of the Centre and the Poles; and in the next year their opposition forced the government to abandon a bill to raise military salaries. This was more than Caprivi could bear, and he openly declared war with them by stating that he was willing to take good advice from any quarter, but that he could not

find it among the Liberal groups, and therefore could not enter into closer relations with them.

The confiscated revenues returned to the bishops.

That the Emperor did not intend to follow the programme of the Liberals was made, indeed, abundantly evident by his submitting to the Landtag in this same year, 1891, a bill to restore to the Catholic bishops the revenues withheld during the Kulturkampf. In spite of objections urged by the National Liberals, and even by the Free Conservatives, the measure was pushed through in accordance with Bismarck's practice of trying to secure the assistance of the Centre in critical moments by making concessions in church matters. The policy, however, has had no better results than before, for while the Clericals have occasionally saved the government from defeat, they have sometimes turned against it on the most important occasions.

The commercial treaties of 1891.

Although the Emperor did not adopt the principles of the Liberals, he was very far from accepting the dogmas of the Conservatives. He abandoned the high protective tariff which had been the main basis of the alliance between them and Bismarck, and negotiated a series of reciprocity treaties that accorded far better with the economic principles of the Liberals. The Conservatives were, naturally, much provoked, and a large part of them voted against the treaties, which were, however, ratified in the Reichstag by a large majority on December 17, 1891.

So far the Emperor had succeeded in getting a majority for all his most important measures, and in

framing his policy as he pleased, without much regard to the views of any political party; but in the year 1892 he was constrained to yield to the pressure of public opinion. It happened in this wise: King William has a horror of irreligious sentiments, to which he is inclined to attribute the spread of socialistic and other doctrines subversive of discipline and good order. With a view of counteracting all such tendencies, and also, no doubt, for the sake of further conciliating the Clericals, a bill was presented to the Prussian Landtag, providing for the religious education of children by the clergy of the different sects. The measure would have increased very much the influence of the Catholic and Protestant churches over the schools, and for that reason was heartily approved by the Conservatives and the Centre, who were in close concert at this time. Now these two parties together had a majority in the Landtag, and hence could insure the passage of the law. But in the community at large the feeling against it ran so high that the Emperor, who had declared in a public speech that his course was right and would be pursued, was staggered, and suddenly ordered his ministers to withdraw the bill. The immediate effect of his change of mind was the resignation of the Minister of Education and surrender by Caprivi of his functions as Prussian Premier, though not of his position as Imperial Chancellor. Another result was a loss of prestige on the part of the government. The Liberals were, of course, overjoyed at their victory, but the Clericals and Conservatives were disgusted. The former had no

The Prussian education bill of 1892.

hesitation in venting their wrath by voting against a naval appropriation; while the latter, who did not dare to assume a position of open hostility, showed their irritation by quarreling among themselves.

The army bill of 1892–93 rejected by the Reichstag.

The effect of the government's loss of influence was seen in the defeat of the army bill and in the elections that followed. This bill, which was brought into the Reichstag in November, 1892, and came to a final vote six months later, was designed to increase the size of the army, and as an offset it was proposed to reduce the term of actual service to two years instead of two and a half. Now the Conservative parties and the National Liberals had not votes enough to carry it, and the help of a large part of the Centre was necessary to make up a majority. But although many of the Clericals in the Reichstag, who are by nature political traders, would have been glad to vote for the bill as the price of concessions to the church, yet the feeling among their constituents was so strong against the measure that only a few of them, representing the aristocratic Catholic districts of northern Prussia, ventured to do so. The result was that on May 6, 1893, the bill was rejected, 210 to 162.

Dissolution.

The new Reichstag passes the bill.

The Reichstag was at once dissolved, and the government was so far successful in the campaign that on July 13 the newly elected representatives passed the crucial clause in the form finally accepted by Caprivi by a vote of 198 to 187, and afterwards the whole bill, 201 to 185.

At first sight this appears to have been a great triumph for the government, but if we look closely the

victory will be seen to be a very doubtful one. In the first place the form in which the bill was finally passed, with the approval of the government, was one that Caprivi had refused to accept before the dissolution; and in fact it would probably not have been difficult to procure the consent of the old Reichstag to the bill in that form. In the second place the candidates who favored the bill received at the election less than half of the popular vote. In the third place, the majority for the bill in the new Reichstag was very narrow, and depended in fact on the votes of the nineteen Polish members, whose opposition would have turned the scale.[1] Finally the majority, far from being a united party, was composed of inharmonious and uncertain elements. The National Liberals gained few seats at the elections, while the two Conservative parties hardly gained at all, and yet these three groups are the only ones on which the government can safely rely in the future. The rest of the majority was made up chiefly of Poles, of Anti-Semitics and of dissident Radicals, who cannot be expected to be constant allies. In the ranks of the opposition, on the other hand, the Socialists, the most implacable of all the enemies the government has ever had, gained about twenty per cent. both in seats and in

A doubtful victory for the government.

[1] In this case the Emperor reaped the reward of his own magnanimity, for the Poles had hated Bismarck, who pursued the policy of driving out of the country those members of the race that were not citizens of the Empire, and supplying their places with German colonists. King William abandoned this practice, conciliated the Poles in administrative, educational, and ecclesiastical matters, and even raised one of them to the See of Posen, thereby winning the friendship of their representatives.

popular votes;[1] while the great party of the Centre, though slightly diminished in numbers, was more bitterly hostile than it has been at any time since the close of the Kulturkampf. The Emperor might, indeed, draw some consolation from the fact that the *Freisinnige*, or Radical party, broke in two, and lost nearly half its members, but this hardly counterbalanced the danger from the increase of the Socialists.

Two tendencies shown in the elections of 1893.

Hostility of the south German States.

Two marked tendencies shown in the recent elections deserve especial notice. One of these is the unpopularity of the Emperor's course in the south German States. This is as unmistakable as it is unfortunate. Thirty-nine out of the forty-eight members of the Reichstag elected in Bavaria, and fourteen out of the seventeen from Wurtemberg, were pledged to oppose the army bill; and in fact the measure was saved only by a gain of supporters in Prussia and the other States north of the Main. The hostility of the south is due not to any want of loyalty to the Empire, but to a dislike of the attempt to rule the whole country from Berlin by treating the smaller States as dependencies of Prussia. It may also be traced not less certainly to the breaking up of the National Liberals, the only great national party in which the leaders from all parts of the Empire could act in concert.

The other tendency to which allusion has been made is the increasing disintegration of the groups, and this is a direct consequence of the Emperor's attempt to

[1] They polled nearly two million votes, and elected forty-four deputies.

stand above all parties and select as his ministers men of different opinions. His policy has been neither altogether conservative nor entirely liberal. On some subjects, such as the tariff, the treatment of Socialists, and the press, he has followed a course highly satisfactory to the Liberals; on others, such as education, and more especially the army, he has done quite the reverse. The result is that the several ministers have been far more independent of each other, less in harmony, and more jealous of one another's influence than in Bismarck's day; while in the Reichstag the parties are even less clearly divided than before into supporters and opponents of the administration. Since the Emperor took the reins into his own hands, every one of the groups has been hostile to some measure of the government, and every one, except, perhaps, the Socialists, has approved of some of its bills. All this has naturally produced a lack of political cohesion and a confusion of aims. The parties to which the crown chiefly looks for support are, in fact, far from having the union among themselves that is necessary for a successful conduct of public affairs. During the campaign of 1893 the government was annoyed to find that the Conservatives, the Free Conservatives, and the National Liberals, instead of combining to carry the elections, set up rival candidates, and fought against each other. But it is hard to see how any other result could have been expected where the ministers were not in accord among themselves and made no attempt to organize and lead their followers. At that election the

Increasing disintegration of parties caused by the Emperor's policy.

Prussian bureaucracy did not exert the customary pressure on the voters, and while this was in itself a great gain, it was unfortunately also a sign of a want of sympathy between the government and the parties on which it must rely for the support of its policy. Except for the Centre and the Socialists, who have succeeded in keeping their followers pretty well together, in spite of serious differences of opinion, the process of disintegration has gone even farther among the opponents than the friends of the government. The present Reichstag is, in fact, subdivided to an astonishing degree; for, in addition to the two Conservative parties, the National Liberals, the Centre, the Socialists, and the four classes of Particularists, there are no less than five separate groups of Radicals, no one of which contains over twenty-five members.[1]

Lord Bacon, in his essay on "Counsel," remarks that "It is in vaine for Princes to take Counsel concerning Matters, if they take no Counsell likewise concerning Persons;" and it may be added that in a modern government with a representative assembly there is no use in considering programmes unless parties

[1] The different groups in the present Reichstag, and the number of their members, are as follows: —

German Conservatives	72	Bavarian Peasants' Union	4
German Imperial Party	26	Social Democrats	44
National Liberals	53	Poles	19
Anti-Semitics	16	Alsace Lorrainers	8
Centre	96	Guelphs	7
Free-thinking, Union	13	Independents	4
Free-thinking, People's Party	23	Dane	1
South German People's Party	11		

are considered also. But this is precisely the mistake that has been made of late years in Germany. The Conservatives to-day are, on the whole, decidedly an administration party; but as the present government does not try to reconcile its interests with theirs, — does not, in fact, seek to lead and control them, — they develop their own programme without always considering the opinions of the ministers, and hence cannot be relied upon to do what the government desires. We have seen that when Bismarck found the National Liberals unwilling to submit to his dictation and adopt his policy, he turned to the Conservatives as a more docile and manageable party. The reason, indeed, that the German government hesitates to ally itself closely with the Liberals is that they become numerous under the favor of the crown, but cannot be subjected to discipline and made to obey their leaders. The Conservatives, on the contrary, rarely grow so strong as to be dangerous, and in Prussia, at least, are not independent enough to be exacting if properly managed. Now the present government, by departing from Bismarck's later policy of an intimate union with the Conservatives, has left them to a great extent without guidance. The result is that they have not only become weakened by internal dissensions, but have adopted agrarian theories, and taken up an attitude of aggressive hostility to the Jews, which the Emperor cannot sanction, and which cannot fail to be a source of great perplexity in the future.

But perhaps the worst feature in the existing condition of politics is the constant diminution of the

moderate elements. Less than one quarter of the members of the Reichstag can now be classed under that head, while all the rest are either particularist or belong to some extreme group.[1]

Dissensions among the ministers in 1894.

The practice of filling the highest offices of state with men of different and even conflicting views bore at length its natural fruit. The Emperor had abandoned the repressive measures against the Socialists, and had allowed the exceptional laws for their suppression to lapse. But from a political point of view the policy of liberty was even less successful than that of persecution. Their associations and newspapers revived, their members increased faster than ever; and although freedom of discussion brought in its train greater moderation and fostered differences of opinion among the members, it did not prevent the body from remaining a source of danger to the state. Still less did it prevent the party from attacking the government both in the Reichstag and through the press. At last the Emperor made up his mind to resort again to repressive action of some kind; but Caprivi the Chancellor, and Eulenburg the head of the Prussian cabinet, found it impossible to agree upon the matter, and the quarrel became so sharp that both of them were forced to retire from office.

A few months later the so-called anti-revolutionary bill to punish glorification or justification of offenses against public order was brought into the Reichstag.

[1] The only groups that can fairly be reckoned as moderate are the Free Conservatives, the National Liberals, and the Freisinnige Vereinigung.

It was, however, amended in committee by the Clericals until it lost much of its anti-revolutionary character, and became chiefly a measure for helping and protecting the church. So thoroughly did it change its character that at last it was ignominiously rejected by the Reichstag without even a formal division. About the same time the bill to increase the tax on tobacco was voted down by a large majority; and in fact the government failed in this session to carry a single one of the measures that had been announced in the speech from the throne. The Reichstag had become thoroughly unmanageable.[1] Nor does a change in its attitude seem probable; for the present state of party spirit is highly unfavorable to the government. The Conservatives, by reason of agricultural distress, have come under the influence of agrarians, who demand bimetalism and a state monopoly of imported cereals, neither of which can be conceded by the Emperor. The moderate elements have lost their strength. The Centre is defiant, the Radicals are hostile, and with the Social Democrats the government is engaged in a life and death struggle, breaking up their societies, and trying to silence their press by means of tyrannical prosecutions for libel. In short, it is not easy to see

[1] It also irritated the Emperor very much at the time of Bismarck's birthday. The former Chancellor had increased the difficulties of the government by constant public criticism of its policy; and in order, perhaps, to put a stop to this, the Emperor finally became reconciled to his former minister. Bismarck's eightieth birthday was made the occasion for an ovation; but the Centre, the Poles, the Radicals, and the Social Democrats could not forgive his treatment of them, and voted down a congratulatory address, which was proposed in the Reichstag.

how the Emperor can hope to get a Reichstag with a majority of faithful supporters unless fortune offers a popular issue on which to base a dissolution.

Such has been, in brief, the history of political parties in the German Empire. Let us now study the causes that underlie their condition.

Causes of absence of great parties.

In the first place the material is not adapted to the formation of great parties, for the Germans are too little homogeneous, and their traditions of thought are too diverse, to allow any large part of the people to work together for a common end. One is constantly struck by the contradictions in the different phases of German character. Side by side with the dreamy, mystical turn of mind, there is a talent for organization and a submission to discipline that have made them the first military people of the day. Again, we are apt to attribute to German scholarship a peculiarly agnostic tendency, and yet no rulers in Christendom have the name of God so constantly on their lips as the German Emperors. Nor is there the least affectation or cant about this, for the Germans are at the same time one of the most religious and one of the most skeptical of races. The fact is that the people are divided into strata, social and intellectual, which are very different from one another in character and tone of thought. The various classes are, indeed, separated by an almost impassable gulf.[1] At one extremity we find the noble landowners of Prussia, who form an aristocracy of the most exclusive

Lack of homogeneousness of the people.

[1] See an interesting article entitled "Society in Berlin," by Professor Geffcken, in the *New Review*, August, 1892.

type. They are conservative by temperament, military by taste and education, and the privilege which the officers still retain in most of the Prussian regiments of admitting as comrades only such men as they choose has enabled this class to keep the bulk of the offices in the army in its own hands. At the other end of the social scale are the workingmen, and these on account of their very isolation are peculiarly prone to socialism. Between the two extremes stand the commercial classes and the Jews, who are despised by those above them, and disliked by those below. The geographical differences are also strongly marked in Germany. The south and west were far more thoroughly imbued with the principles of the French Revolution, and are far more democratic to-day, than the older parts of Prussia. The Prussians also are less German, as we commonly understand the German character, than the rest of the people. They are more practical, more military, and more bureaucratic; and hence the sympathy even between the corresponding classes in different parts of the country is by no means complete. From a social point of view Germany is in fact extremely decentralized, as the limited and local circulation of the newspapers abundantly proves.[1]

Intense individualism in opinions.

This in itself might account for the absence of great national parties, but there are other reasons to be found in the nature of the German considered as an individual. Heine declared that if twelve Germans were gathered together they

[1] See an article on "The German Daily Press," by Bamberger, in the *Nineteenth Century*, for January, 1890.

would form as many separate parties, because each one of them would have an opinion of his own which differed somewhat from that of any of the others. There is much truth in the remark, for the German has a strong love of intellectual independence, and dislikes the idea of subordinating his opinion to that of another man, or of being supposed to take his views wholesale from some one else. No group in the Reichstag, for example, wants to be considered a purely governmental party, at the beck and call of the Chancellor; and in the same way the newspapers do not like to be treated as the mere organs of a party, and the parties do not like to be thought to be under the guidance of a newspaper.[1] All this, of course, makes party discipline a very difficult matter.

Bismarck's dislike of party politics.

Something must also be attributed to the policy of the government.[2] Bismarck hated parties, and chafed under their criticism; and when the National Liberals grew strong enough to be formidable, and at the same time were too independent to be submissive, he wanted to be rid of them; so he proceeded on the principle of *divide et impera*, and turning against them he broke them to pieces. This course has been pursued even more thoroughly, if with less deliberate intent, since his fall. Another thing which Bismarck detested, but which is essential to the formation of great national parties, is a free press, and partly by favor, partly by

His treatment of the press.

[1] Bamberger, *Id.*

[2] Cf. "Vaterlandsliebe, Parteigeist, u. Weltbürgerthum," by Dr. J. B. Meyer, in *Deutsche Zeit u. Streit-Fragen*, 1893.

force, he succeeded in keeping the greater part of the German press under his control. By means of the anti-socialist laws he well nigh destroyed the socialist press; and during his rule prosecutions for libeling the Chancellor were so frequent that it became very dangerous to criticise the administration, although the governmental newspapers enjoyed an entire immunity in attacking his enemies. Through the press office, which grew to be an important wheel in the political machinery, the so-called "reptile press" was filled with inspired or semi-inspired articles, and no small part of the newspapers were held in subjection, by giving or refusing information, by official advertisements, and even by money. Fortunately for Bismarck, there was a considerable source of revenue available for the purpose, for when the Kingdom of Hanover was incorporated in Prussia, a fund, known as the Guelph Fund, was formed from the proceeds of the royal property, and set apart for the benefit of the deposed king, subject, however, to a condition that he should not receive it until he acquiesced in the loss of his throne. This he steadily refused to do, and hence the income, amounting to about a million marks a year, remained unspent in the hands of the Prussian government. Now there being no provision of law obliging the ministers to account for the income, they were free to use it as they chose, and they placed a large part of it at the disposal of the press office. In this way the press became a weapon in the hands of the government, rather than an organ of public opinion.[1] Caprivi, more

[1] Cf. "The German Daily Press," by Bamberger, *supra*; and "The

liberal than his predecessor, gave up the practice of controlling the newspapers, and, since 1892, the income of the Guelph Fund has been paid to the Duke of Cumberland, the heir of the late King of Hanover. It may be hoped, therefore, that in time the press will acquire the influence that it ought to have in a free country; but as yet it has not done so.

Lack of responsibility of the parties helps to break them up.

The disintegration of the parties is also due to their peculiar position in the Reichstag and Landtag. Unlike cabinet officers who are responsible to parliament, the ministers in Germany are not the chiefs of any party, but rather professional administrators. In fact, the line between officials and the rest of the community is very marked, and the leading men in the popular chamber do not aspire to be ministers, and are rarely selected for the great offices of state. So true is this that even when the National Liberals were most closely allied with Bismarck, it was not the adherents of this party, but the Free Conservatives who were appointed to important positions. It follows that the parties are independent of the ministers, and are not responsible for the conduct of the state. Their function is negative rather than positive, for they do not direct and control the government, but simply criticise and amend its measures. Such a lack of responsibility not only makes the parties hard to manage, but it relieves their members in large part from the necessity of agreeing upon a programme. They are not kept together by

Change of Government in Germany," in the *Fortnightly Review*, August, 1890.

the need of coöperating for a common end, and hence there is nothing to prevent the parties from breaking up into fragments, according to the various shades of opinion they contain. This is, in fact, continually taking place. Every little while a fraction splits off from some party and forms an ephemeral group by itself, to be absorbed later by another organization. Strange results sometimes follow, and in the early days of the Reichstag the parties were such queer conglomerates that one of them, on account of the heterogeneous elements it contained, was called in derision the party of the mixed pickles.

The party clubs.

Except in the case of the Social Democrats, and to some extent of the Centre, the only organization in the party is the club, which is composed exclusively of deputies in the Reichstag, and is formed in order to discuss and decide upon the policy to be pursued there. But the Germans do not like binding decisions, except on the most important measures, and it frequently happens, even on matters of serious consequence, that the members of the club do not all vote the same way. The most striking of these clubs was that of the National Liberals in their halcyon days; for the discipline of that party was always loose, and the debates in the club were so animated that it resembled a small parliament by itself. With the negative objects for which the parties stand, the clubs alone would not suffice to hold the members together, and the real bond of union is the necessity for common action at elections. But here, as in France, the requirement of a majority vote, with a second ballot

in case no one obtains it, favors the existence of a multiplicity of parties.

In all three of the countries we have been studying, there are a number of political groups, but the causes of this state of things are not the same in each case. In some ways, the parties in Germany differ very much from those in France and still more from those in Italy. Their object is to restrain rather than direct the government; and in the element that binds their members together political principles form a larger and personal ambition a smaller element.

Difficulty in prophesying the future.

One is always tempted to play at the hazardous game of prophecy, and to test the soundness of one's opinions by applying them to a future and therefore an unknown state of things. This is especially perilous in so complicated a matter as politics, where much depends on the personal qualities of the leading men, and where unforeseen events often upset the whole basis of calculation. It is peculiarly difficult in Germany on account of the number of factors that enter into the problem. One of the most important of these is the disposition and capacity of the Emperor; and it is not a little extraordinary that although William II. has now been on the throne eight years, and has seized on every possible opportunity to declare his sentiments on every conceivable subject, his character is still an enigma. It is not clear whether he has really profound theories of government or not, and whether, like his grandfather, he has the strength of will to carry out his plans, in spite of serious opposition, or

Character of the Emperor.

whether, as his course on the education bill and during the recent friction with England about the Transvaal seem to indicate, he would give way before a determined resistance. He has, however, one quality about which there can be no mistake, and that is his desire to identify himself personally and publicly with his government, to make every act of the administration visibly his own. This is largely due, no doubt, to his craving for theatrical display, and to his love of acting the part of king in the drama of the world; but it arises also from his conception of his duty as a sovereign anointed by God. He apparently regards himself as commissioned, not only to govern the state, but to lead and guide his people in all matters. The most curious example of this was given in his address on the proper method of teaching history, made before a meeting of instructors in December, 1890. The address embodies, indeed, the Emperor's political ideas, and illustrates his practical tone of mind. He told his hearers that the present mode of teaching history was all wrong; that instead of beginning with Greece and Rome and coming down to recent times, they ought to begin with the present century and then go backwards. He also remarked that the students ought to be taught that the French Revolution was an unmitigated crime against God and man, and that they ought to be shown the fallacies of socialism. In his opinion, the object of education is to teach politics, to create obedient subjects and loyal supporters of the crown.[1]

His desire for personal government.

Causes of this.

[1] Valbert, in the *Revue des Deux Mondes* (Jan. 1, 1891, "L'Empereur

His theory of the monarchy.

The Emperor is, indeed, an ardent believer in the new monarchical theory which has recently come into vogue in Germany, — a theory that decries universal suffrage and proclaims the military monarchy as the best possible form of government, — thus furnishing one of many examples of the way the end of the century is rejecting the principles and reversing the conclusions that have been laboriously developed during the last hundred years.[1] The fact is, that ever since the battle of Sadowa a profound change has been coming over the German character. The dreamy, poetical, mystical temperament has given way before the hard, practical, organizing spirit of the Prussians.[2] The unity of the Fatherland, which the dreamers failed to accomplish, was brought about by means of the drill-sergeant, and hence the nation is ruled by his methods.[3]

Dangers of this policy.

The Emperor's desire to make himself prominent in public affairs is liable to prove a snare to him; for if he is known to direct in person the policy of the state, and the course of the government becomes at any time unpopular, which is certain to happen sooner or later, he cannot set himself right

Guillaume II. et ses Vues sur la Réforme de l'Enseignement Secondaire"), comments on this speech and on the *chauvinism* of German historical instruction.

[1] Perhaps the best exponent of this theory is Professor Treitschke. See a criticism of his works by J. Bourdeau, in the *Revue des Deux Mondes* (June 15, 1889, "Un Apologiste de l'Etat Prussien").

[2] There is an interesting letter on this subject in the *Nation* of July 24, 1890.

[3] For an amusing account of the excessive administration in Germany, see "An Over-administered Nation," *Macmillan*, May, 1892.

by dismissing his ministers, but will be held personally responsible, and must bear the blame. A similar habit helped to overturn the throne of Louis Philippe; and while there is no danger of such a result in the case of the Emperor, it is not improbable that a false step on his part will be followed by a serious loss of reputation and authority, and will pave the way for the exercise of a larger influence by the representatives of the people.

The growth of discontent.

Two opposite forces are growing in Germany to-day: one is the belief in military monarchy, which is receiving no little support among scholars; the other is a spirit of discontent, which is making fearful headway among the lower classes; and between the two the liberal elements are being pushed into the background.[1] In fact, both of these opposing forces derive much of their strength from a common source. The change from a theoretical to a practical point of view, that has lent potency to the doctrine of military monarchy, applies not only to politics, but also to private life, and here it has replaced the enthusiasm for ideal and intellectual aims by a craving for material prosperity and well-being.[2] The result, as we have seen, has been an immense increase in the power of the Social Democrats. It would be a great mistake, however, to suppose that all the men who vote for the socialist candidates agree with their doctrines. Proba-

[1] Cf. Bamberger, "The German Crisis and the Emperor," *New Review*, April, 1892.

[2] Professor Bryce comments on this in "An Age of Discontent," *Contemp. Rev.*, Jan., 1891.

bly a small part of them do so;[1] but the reactionary policy of the government, the burden of service in the army, and, above all, the difficulty of earning a comfortable living, have made a great many people discontented, and these vote the Socialist ticket as the most effective method of protest. The size of the Socialist vote is, therefore, a measure of the amount of discontent in Germany, and as such it is sufficiently alarming. That it will continue to grow for the present is altogether probable; but what will happen if the Social Democrats become strong enough to exercise a decided influence on politics is by no means clear. With their increase in numbers in the Reichstag, their leaders have already become less violent,[2] and power is likely in the future to bring moderation. It is probable also that if they cease to be in a position of mere blind opposition, their discipline will be relaxed, and they will break up like other German parties of the Left.

Popular government in Germany improbable at present.

Although the Emperor is liable by making mistakes in policy to lose some of his authority, and although the spirit of discontent may give rise to difficulty or even to disorder, it will probably be a long time before the representatives of the people obtain the direction of public affairs. In France popular government arose not because democracy was strong, but because aristocracy had withered away and monarchy had become feeble; but in Ger-

[1] Cf. Bamberger, *supra*; J. Bourdeau, "Le Parti de la Démocratie Sociale en Allemagne," *Revue des Deux Mondes*, March 1, and April 15, 1891.

[2] Cf. Bamberger, *supra*.

many monarchy is a living force, and democracy can get control of the state only by becoming really powerful. Now democracy cannot be strong until the people are sufficiently homogeneous to form a real public opinion, and this cannot happen while the classes in society are out of harmony with each other.

Absence of conflict between the classes in English history.

In studying the history of European countries, one is struck by the comparative absence in England of struggles between the different classes. By the end of the reign of Henry II. the power of the great vassals had been so far broken, and the organization of the royal justice had so thoroughly established the authority of the crown, that there was more danger of oppression by the King than by the feudal nobles; and the latter, feeling their own weakness, had a strong motive for enlisting popular sympathy on their side. They could not afford to disregard the rest of the people, who became, in fact, their natural allies against arbitrary rule on the part of the crown. The barons at Runnymede extorted from King John, not privileges for their own order, but a charter of liberties for all Englishmen; and during the next two hundred and fifty years the nobles, although often banded together to curtail the royal authority and acquire more power for Parliament or for themselves, were never united against the lower classes, except, perhaps, at the moment of the peasants' revolt under Richard II.

This period of English history was brought to a close by the Wars of the Roses. In the terrible struggle that ensued the common people took little part, but

the baronage fought among themselves with such ferocity that the most powerful families were exterminated, feudalism was destroyed, and the ground was prepared for the despotism of the Tudors.[1] After that able line of rulers became extinct, and the sceptre passed to the feebler house of Stuart, political parties with a continuous life began to form in the state. Buckle, in his history of civilization in England,[2] speaks of the conflict with Charles I. as a war of classes; and it is certain that at no period of English history did party lines coincide so nearly with social ones as during the Commonwealth. In comparing the English movement with the Fronde on the other side of the Channel, Buckle attributes the success of the former to this very fact; but it would, perhaps, be more just to ascribe

[1] Stubbs (*Const. Hist. of England*, 3d ed. vol. iii. p. 519), says: "Taking the king and the three estates as the factors of the national problem, it is probably true to say in general terms that, from the Conquest to the Great Charter, the crown, the clergy, and the commons were banded together against the baronage; the legal and national instincts and interests against the feudal. From the date of Magna Charta to the revolution of 1399, the barons and the commons were banded in resistance of the aggressive policy of the crown, the action of the clergy being greatly perturbed by the attraction and repulsion of the papacy. From the accession of Henry IV. to the accession of Henry VII., the baronage, the people, and the royal house were divided each within itself, and that internal division was working a sort of political suicide which the Tudor reigns arrested, and by arresting it they made possible the restoration of the national balance." In another place (*Id.*, vol. ii. p. 195), he remarks: "We shall see in the history of the fourteenth century that local and personal interests were strong in all the three estates, and that there was far more to draw them together, or to divide them, so to speak, vertically, than to separate them according to class interests." And again (*Id.*, vol. ii. p. 320), "The whole period witnesses no great struggle between the lords and the commons, or the result might have been different."

[2] Introduction, chap. x.

Cromwell's failure to establish a permanent form of government to the alienation of a whole section of the community.

With the Restoration the antagonism between the classes again subsided, and since that time the parties have been based essentially on differences of opinion, not on social distinctions. Both the Whigs and the Tories always included in their ranks large numbers of the aristocracy, who acted as leaders to the rest of the people; while every effort to extend the suffrage has found some of its strongest advocates among the Peers. This is due in part, no doubt, to the fact which the late Professor Freeman took so much pleasure in expounding, that the English nobility have never been a close caste, and hence have retained a strong sympathy with the people. But whatever the cause, the absence of class jealousy in the formation of party has been of vast importance to the nation, and explains the steady progress of political liberty. One cannot help regretting, therefore, the effort made of late years to foster enmity between the masses and the classes, an attempt which has not resulted in consolidating the former, but has tended to drive the bulk of the latter into one political camp.

Their frequency in Germany.

The history of Germany is very different. During the period when the English kings were extending and consolidating their power, the Emperors were exhausting their strength in a fruitless struggle with the Papacy; and by the time the line of Hohenstaufen came to an end the opportunity to create a strong central power in Germany had passed

away. The forces that might have sufficed to establish the imperial authority on a firm basis in the north had been carried across the Alps, and wasted by battles on the plains of Lombardy and by Roman fever. The absence of an effective control on the part of the crown permitted each element in the Empire to develop independently, to pursue its own ends without regard to the common welfare; and the result was that at the close of the Middle Ages the Germans, far from being a homogeneous people, with a uniform law and a common national sentiment, were divided into classes sharply separated by differences of habits, of traditions, of aspirations, and even of laws.[1]

By the middle of the fourteenth century the antagonism between the cities, the princes, the knights, and the peasants had reached a dangerous point. The cities, in which the commercial and industrial development was exclusively centred, conducted as a rule their own government, administered their own justice, and, except for the payment of certain sums of money in lieu of taxes, were almost independent of the rest of the country. Meanwhile the princes, or great feudal vassals of the Empire, who were striving not only to bring all the social forces within their territories into subjection, but also to extend their authority in every direction, were extremely jealous of the wealth and power of the cities. The same jealousy was felt by the knights, or lesser feudal tenants of the Empire, who envied, moreover, the growing influence of the princes. Their own position had in fact become precarious, for their mili-

[1] Cf. Lamprecht, *Deutsche Geschichte*, Bd. iv. and v. hlf. i.

tary usefulness was fast disappearing, and they were often forced to eke out a livelihood by robbery and by oppressing the peasants on their lands.[1] The condition of the peasants was, indeed, miserable. For the most part they had been reduced to serfdom, and had been deprived nearly everywhere of political rights, being even denied a share in the government of their villages. A political and social crisis was at hand. Towards the end of the fourteenth century wars between the knights and the cities broke out all over central Germany. The cities appeared at first to have the better chance of victory, but by the help of the princes they were beaten; and although they were very far from being subdued, their political power began from that time to decline. This was the first of the great social struggles, but the condition of the country rendered others inevitable. The ferment caused by the Reformation precipitated a conflict between the remaining classes a hundred and fifty years later. Revolts of the knights and of the peasants followed each other in 1522 and 1525, and both were suppressed by the princes, that of the peasants with great barbarity.

The princes were now the predominant force in the Empire, yet they were still far from being the masters of their own territories, for the disintegrating process that had destroyed the power of the Emperor had been at work in the great fiefs also. During the troublous times, the estates drew into their own hands a large

[1] Riehl (*Die Bürgerliche Gesellschaft*, book i. part ii. ch. ii.) thinks that in the Middle Ages the *Ritter* played the part of mediators between the classes, and that their isolation dates from a later period.

part of the political authority of the princes, which they used to create privileges for themselves, and to grind down the lower classes in city and country.[1] After the thirty years' war, however, a change took place. The nobility came out of that fearful struggle weaker than before, and in the Protestant districts of Germany lost the support they had hitherto obtained from the bishops. The princes, on the other hand, were strengthened, and began to reduce the power of the estates, and reorganize their governments on a more strictly monarchical basis.

The process was carried out most thoroughly in Brandenburg, especially after it developed into the Kingdom of Prussia.[2] Here the crown subjected all classes to its own authority by means of a centralized bureaucracy, which was out of the reach of class influence, and was guided solely by the royal will. The princes of the House of Hohenzollern felt that their mission consisted in introducing order among the jarring elements of the state by standing above them all, maintaining an impartial attitude, and subordinating special interests to the common good. This they did so effectually that the hostile classes, sects, and races learned to look for peace and protection to the King. But although the nobles in Prussia were unable to prolong their political power by exerting a controlling influence at court, as they did in some of the other German States, they were very far from

[1] Cf. Gneist, *Der Rechtstaat*, 2d ed. pp. 19–22.

[2] Cf. Treitschke, *Deutsche Geschichte, in 19. Jahrhundert*, 3d ed. vol. i. pp. 24–86; Gneist, "Les Réformes Admr. en Prusse," *op. cit.*

losing all their privileges; for the Hohenzollerns made no attempt to fuse all the classes together, or to give all ranks among the people equal rights by creating a uniform system of law. Their theory of the state was an absolute monarchy, in which the citizens should be divided, as in Plato's republic, into a series of orders, each performing a special kind of duties. Hence they tried deliberately to keep the classes distinct, organizing them separately, and assigning to each definite functions. The nobles were intended to pursue agriculture on a large scale and to supply officers for the army; the peasants were to do the smaller cultivation and furnish the common soldiers; while the cities were to carry on commerce and manufactures and pay a larger share of the taxes. The hardships of excessive privilege were carefully lightened, and the condition of the peasants was vastly improved, but until this century there was no effort to abolish class privileges; and indeed they can hardly be said to have disappeared altogether at the present day. It is not surprising, therefore, that the classes are still sharply separated in Germany, and especially in Prussia.

In Prussia, class strife is an obstacle to popular government.

The condition of the classes has had a momentous effect on political development. The Prussian nobility have never stood like the English as defenders of the lowly against the crown. On the contrary, the crown has been the shield of the peasants against the oppressions of the great landowners. The nobles, moreover, have belonged wholly to one political party, so that Prussia has never known that division of its aristocracy into

Liberals and Conservatives, each furnishing leaders to the people, which has been of such inestimable value in England. It is, in fact, the strife of noble with peasant, of city with country, compelling every one to look to the king as an arbiter, that has given to the crown, and the bureaucracy as its tool, so great an influence and renown.[1] The same cause must continue to produce the same effect, and the royal authority cannot be permanently reduced until a great party is formed which finds hearty support in every rank of life, and can speak in the name of the people without distinction of class. But this must be preceded by a long, slow process of social evolution.

Supremacy of the Reichstag undesirable so long as class antagonism lasts.

Nor is it desirable that the Reichstag should acquire supremacy in the state so long as the antagonism between the classes continues. The present system, in which the elective chamber has a voice in public affairs, while the main control rests with the crown, has the advantages and the disadvantages of all hereditary monarchies. It has the merit of enabling a vigorous and capable sovereign to act for the public good, without too much regard to the prejudices of the various classes or the selfishness of particular interests; but, on the other hand, it makes the selection of the ruler depend on the hazard of birth, and the history of Prussia shows to what a point of exaltation or depression the fortunes of the nation may be brought by the personal qualities of the reigning prince.

[1] This was also true at one time of the monarchy in France, but hardly to so great an extent as in Germany.

Now, whatever opinion one may hold in regard to the relative merits of monarchy and democracy, it must be observed that a transfer of power from the Emperor to the Reichstag would not at present produce a true democracy. Professor Freeman, in his essay on the "Growth of the English Constitution,"[1] remarks: "Democracy, according to Periklês, is a government of the whole people, as opposed to oligarchy, a government of only a part of the people. A government which vests all power in any one class, a government which shuts out any one class, whether that class be the highest or the lowest, does not answer the definition of Periklês; it is not a government of the whole but only of a part; it is not a democracy, but an oligarchy." And in a note he adds: "It follows that, when the commonwealth of Florence disfranchised the whole of the noble families, it lost its right to be called a democracy." The conception of government by the whole people in any large nation is, of course, a chimera; for wherever the suffrage is wide, parties are certain to exist, and the control must really be in the hands of the party that comprises a majority, or a rough approximation to a majority, of the people. But the principle has nevertheless an important application. If the line of division is vertical, so that the party in power includes a considerable portion of each class in the community, every section of the people has a direct share in the government; but if the line is horizontal, so that the party is substan-

Nature of true democracy.

Vertical and horizontal division of parties.

[1] Page 10.

tially composed of a single class, then the classes not represented in it are virtually disfranchised so long as that party maintains its ascendency. Instead of a true democracy, we have government by a single class, which degenerates easily into oppression. In this case, indeed, the tyranny is likely to be far worse than it would be if the ruling class were legally the sole possessor of power, because there is a lack of all sense of responsibility towards the rest of the people, and because the alternation in power of different classes, which must inevitably occur, breeds intense bitterness of feeling. So long, therefore, as party lines are vertical, popular government is on a sound basis. But if all the rich men, or all the educated men, are grouped together, the state is in peril; and if the party lines become really horizontal, democracy is on the high road to class tyranny, which leads, as history proves, to a dictatorship. This is the meaning of the classic publicists when they speak of the natural rotation from monarchy to aristocracy, from this to democracy, and then back again to monarchy. To them, democracy meant, not government by the whole people, but the rule of the lower classes.[1] A territorial division of parties, indeed, is not as dangerous as a

[1] Aristotle, who combated Plato's theory of rotation in the form of government (*Politics*, bk. v. ch. xii.), draws a distinction between a πολιτεία, where the citizens at large rule the state for the public good, and a democracy, where the interest of the poor only is considered. (Bk. iii. ch. viii.; bk. iv. ch. iv.) Elsewhere he speaks of the former as a mixture of aristocracy and democracy, and treats it as more stable than either of them. (Bk. v. ch. vii.) He refers also to the peculiar dangers that arise when the middle classes disappear and the rich and poor are equally balanced. (Bk. v. ch. iv.)

horizontal division, because, although the former may lead to civil war, the latter leads to social anarchy and despotism. It follows that so long as the German parties are largely based on class distinctions the absolute supremacy of the Reichstag will not produce true democracy, and will not be a benefit to the country.

At present, therefore, popular government in Germany is neither probable nor desirable. In fact, the existing institutions are by no means adapted to it; and if the supremacy should pass from the monarch to the representatives of the people, a profound modification must necessarily take place in the organization of the Empire. The intricate connection between the Prussian and the federal machinery, which works very well so long as both are controlled by a single man, would hardly be possible if the people became the real source of power. Suppose, for example, that the Reichstag should succeed in compelling the Emperor to select a Chancellor who enjoyed its confidence; suppose, in other words, that the Chancellor should become politically responsible to the Reichstag, but that in Prussia the King remained free to choose his ministers as he pleased. It is clear the government could be made to work smoothly, only on condition that the spheres of action of the Chancellor and the Prussian cabinet became independent of each other, and this would involve a practical abandonment by the latter of all interference in federal matters.

Popular government would involve changes in the organization of the Empire.

Again, suppose that the Landtag should also acquire

the power to make the ministers responsible to itself; and with its present organization it is highly unlikely that such a privilege would be won by the Prussian House of Representatives, without being obtained by the Reichstag as well. In this case, the functions of the Chancellor and the ministers might continue unchanged for a time; but even if the same party controlled both bodies, so that the executive officers were its instruments both in Prussia and the Empire, it is not probable that they would long hold themselves responsible to two separate assemblies. The Reichstag, as the representative of a wider public opinion, would gradually assume the decisive authority in national questions, and hence Prussia would either become merged in the Empire, or else her government would be confined to local affairs. In either event, the Chancellor would cease to be in any degree a Prussian officer, and would acquire a purely federal character. The Bundesrath also would suffer a severe loss of influence if the Chancellor became responsible to the Reichstag; and it has shown its appreciation of this more than once when it has objected to the creation of responsible federal ministers.[1] The Chancellor would no longer speak to it as the delegate of Prussia, but as the representative of the Reichstag. In short, the Bundesrath would fall to the subordinate position occupied by the upper chamber in all countries with a parliamentary form of government. It would not only lose the legislative authority it now wields, but it would hardly be suffered to retain the power to make ex-

[1] This it did in 1878 and again in 1884.

ecutive ordinances and regulations, and so direct the policy of the administration.

But all such changes are no doubt far in the future, and for the present the Reichstag must remain what it has hitherto been, not the directing force in the state, but nevertheless extremely valuable as an organ for the free expression of opinion and as a means of political education.

CHAPTER VIII.

AUSTRIA-HUNGARY: AUSTRIA.

Race and nationality.

THE spirit of the French Revolution was in its essence humanitarian. It disregarded the narrow distinctions of race and country, proclaimed the universal brotherhood of man, and offered to all the world the blessings of its creed. Yet the great political movements to which it gave rise have brought about an increase of race feeling so great that peoples of different blood can no longer live peaceably together under the same government, and the various branches of a race are unhappy until they are all covered by a single flag. Race, in other words, has become a recognized basis of nationality; and this has produced in Europe two new states, and loosened the bonds of two old ones. Within a generation, the ties of blood have united Italy and Germany; while England has gravely debated a plan for a partial separation between the Saxons and the Celts, and Austria has become very seriously disintegrated under the strain of racial antipathies.

The convulsions of 1848, and the reorganization of 1867.

The convulsions of 1848, with the fury of their political, their social, and their race movements, well nigh tore the Austrian monarchy in pieces. An insurrection in Vienna drove the Emperor from his capital, and his Italian

and Hungarian dominions broke into open revolt; but with the help of Russian troops the revolts were at last put down, and for a while the crown was again omnipotent. The people, however, remained discontented, and although after the defeat of Austria by Napoleon III. in the Italian campaign of 1859 a number of political experiments were tried, they all failed to satisfy the different races, or to organize the monarchy on a permanent basis. The war with Prussia brought matters to a crisis, for Austria was sadly humbled, and the Emperor felt that if he would regain his position in Europe he must set his house in order and content his subjects. The task was not an easy one, and the Emperor took the extraordinary step of calling to his help a foreigner, Baron Beust, who had long been a minister of the King of Saxony. But, though a stranger, Beust understood the wants of the country better than his predecessors, and it was not long before he placed the government on a more satisfactory basis. The Italian provinces had already been lost by the wars of 1859 and 1866; with Hungary a new and peculiar relation, a sort of confederation, was now established; and for the rest of the Empire a constitution was framed which remains in force to-day. In this chapter the latter part of the monarchy alone will be considered. The next two will deal with Hungary and the joint government.

In order to understand the institutions of Austria, it is necessary to know something of its peculiar geography and ethnology. The official designation of the western half of the monarchy — which for convenience

Geography and ethnology of Austria.

I shall call simply Austria — is "the kingdoms and lands represented in the Reichsrath," [1] and the name implies the utter lack of unity in the nation. Austria is, in fact, a sort of residuum, consisting of all the territory which belonged to the Empire at the time of the compact with Hungary, and did not form a part of that kingdom. The country has a most irregular outline, touching the Lake of Constance on the west, extending on the north into the heart of Germany by means of the province of Bohemia, stretching one long arm eastward above and even beyond Hungary, and another far to the south along the coast of the Adriatic.

This curiously shaped state is divided into seventeen provinces, all enjoying extended political powers, and almost all the theatre of struggles between two or more of the different races.[2] Some idea of the number of distinct races in the Empire can, indeed, be gathered from the fact that on the assembling of the Reichsrath, or parliament, it has been found necessary to administer the oath in eight different languages.[3] Yet these include only a small part of the tongues

[1] Cf. *Staatsgrundgesetz über gemeinsame Angelegenheiten* (Dec. 21, 1867), § 1, printed in Geller, *Oesterreichische Verwaltungsgesetze*, Bd. I. p. 12; Ulbrich, *Oesterreich*, in Marquardsen, p. 14. Gumplowicz contends that the use of the name Austria for the western half of the monarchy is correct. *Das Oesterreichische Staatsrecht*, p. 45, note 42.

[2] I call these divisions provinces for the sake of simplicity. Technically, some of them are termed kingdoms, others grand-duchies, archduchies, duchies, counties, etc. Cf. *Staatsgrundgesetz über Reichsvertretung*, § 1; Geller, Bd. I. p. 78.

[3] "Austria: its Society, Politics, and Religion," Baroness de Zuylen de Nyevelt, *Nat. Rev.*, Oct., 1891.

and dialects that are spoken in the land. Among the many races that inhabit Austria there are, however, only five important enough to have a marked influence on politics. These are: first, the Germans, who comprise scarcely more than a third of the population, but possess a much larger share of the wealth and culture. They are scattered more or less thickly all through the country, and predominate along the Danube and in the provinces immediately to the south of it. Second, the Bohemians, or Czechs, who are the next most powerful race, and compose a majority of the people in Bohemia and Moravia. Third, the Poles, who form a compact mass in Galicia. Fourth, the Slowenians and other Slavs, living chiefly in the southern provinces in the direction of Triest. And fifth, the Italians, who are to be found in the southern part of the Tyrol, and in the seaports along the Adriatic. The numbers of the various races in Austria, according to the census of December 31, 1890, are as follows: —

Germans	8,461,580
Czechs	5,472,871
Poles	3,719,232
Ruthenians	3,105,221
Slowenians	1,176,672
Italians	675,305
Croats and Serbs	644,926
Roumanians	209,110
Others	430,496
Total	23,895,413

The division of the people into several different races is one of the most important factors in Austrian poli-

tics, and we shall return to it when we come to consider the actual working of the government; but first the political organization of the country must be explained. When this was remodeled after the war with Prussia, five statutes — all bearing the date of December 21, 1867 — were passed, and termed the *Staatsgrundgesetze*, or fundamental laws of the state.[1] They are, in fact, the constitution of Austria, and can be changed only by a two thirds vote of both Houses of Parliament.[2] As they were all enacted on the same day, there is no obvious reason why they might not have been embodied in a single document, especially since they cover the same ground as the constitutions of other countries. One of them, that on the general rights of citizens, consists of a bill of rights, while the rest deal with the organization and powers of the different public authorities in the state. In considering these, the simplest and clearest order will be to take up first the executive and then the legislative branch of the central government, turning afterwards to the provincial institutions, which play a very important part in the politics of the Empire.

The constitution.

[1] Ulbrich, pp. 11, 16; Gumplowicz, §§ 25–27. These five laws are commonly cited by their titles, which indicate their contents. They are as follows: (1) *Staatsgrundgesetz über die Reichsvertretung* (R. G. B. 141. Printed with the amendments of April 2, 1873, inserted in the text, in Geller, Bd. I. p. 78). (2) *St. G. über die allgemeinen Rechte der Staatsbürger* (R. G. B. 142; Geller, Bd. II. pp. 1, 419, and Bd. I. p. 659). (3) *St. G. über das Reichsgericht* (R. G. B. 143; Geller, Bd. I. p. 847). (4) *St. G. über die Richterlichegewalt* (R. G. B. 144; Geller, Bd. I. p. 846). (5) *St. G. über die Regierungs- und Vollzugsgewalt* (R. G. B. 145; Geller, Bd. I. p. 872).

[2] That is a vote of two thirds of the members present. One hundred members constitute a quorum of the lower house in other cases, but for this purpose the presence of one half the members is required. *St. G. Reichsvertretung* (as amended by the Act of April 2, 1873), § 15.

The transmission of the crown in Austria is treated to an unusual extent as something lying quite outside the scope of the fundamental laws; and although the rules of succession and the provisions about regency would doubtless not be changed to-day without the consent of Parliament, they have never been formally incorporated in the constitution. The rules of descent rest entirely on former imperial rescripts, and especially on the Pragmatic Sanction of December 6, 1724.[1] This famous ordinance, issued by Charles VI. to enable his daughter Maria Theresa to succeed him, has made the canons of inheritance somewhat peculiar, for women are neither admitted to the throne as freely as in England, nor absolutely excluded according to the strict rules of the so-called Salic law as in most of the continental monarchies. The succession follows primarily the principle known in the English Common Law as tail male, that is, the crown passes only to male heirs, who trace their descent entirely through males. But if these fail, the succession goes by tail general; in other words, the nearest female heir or her descendant inherits. In such a case, however, the new sovereign starts a fresh line, so that the crown again passes by tail male, and only when the direct male heirs of the new line are exhausted can a woman again ascend the throne.[2] But although by law the succession is strictly hereditary, the next heir does

The crown. Rules of succession.

[1] Geller, Bd. I. p. 3. This ordinance is commonly spoken of as a fundamental law (cf. Ulbrich, pp. 8, 18), but it is not mentioned among the acts for whose amendment a two thirds vote of the Reichsrath is required. *St. G. Reichsvertretung*, § 15.

[2] See Ulbrich, pp. 18–19.

not always succeed to the crown. Thus the present Emperor, Francis Joseph, was not himself the nearest heir, and it seems to be assumed that on his death the first of the archdukes is likely to be passed over in favor of a younger member of the family. This is done by means of the voluntary abdication of the person entitled to succeed, — a right which is universally recognized in continental countries, but more freely used in Austria than elsewhere.

Powers of the Emperor.

The powers of the Emperor are legally much the same as in other constitutional monarchies. His sanction is required for the enactment of laws.[1] He has power to make treaties;[2] to issue ordinances;[3] to appoint the officials;[4] to create peers;[5] to grant pardons and amnesties;[6] and to summon, adjourn, and dissolve the various legislative bodies.[7] The fundamental laws declare that he governs by means of responsible ministers,[8] and by statute all his acts must be countersigned by a minister of state.[9] The countersignature of all the ministers is, moreover, required for those ordinances which proclaim

[1] *St. G. Reichsvertretung*, § 13.

[2] Subject to the approval of the Reichsrath in certain cases. See p. 89, *infra*.

[3] *St. G. Reichsvertretung*, § 14; *St. G. Regierungsgewalt*, § 11.

[4] *St. G. Regierungsgewalt*, § 3.

[5] *St. G. Reichsvertretung*, §§ 3, 5.

[6] *St. G. Richterlichegewalt*, § 13.

[7] For the Reichsrath, see *St. G. Reichsvertretung*, §§ 10, 19. For the provincial Landtags, see the various Landesverordnungen annexed to the Patent of Feb. 26, 1861, *e. g.* that for Lower Austria (Geller, Bd. I. p. 125), §§ 8, 10.

[8] *St. G. Regierungsgewalt*, § 2.

[9] Law of July 25, 1867, § 1. (R. G. B. 101; Geller, Bd. I. p. 873.)

the state of siege, suspend the constitutional rights of the citizen, or are issued with the force of provisional laws in case of urgent necessity when the legislature is not in session.[1] Practically, however, the ministers are the servants of the crown and not of the parliament, and hence the Emperor of Austria can really use his powers with great freedom. This result is due to the incessant quarrels between the different races, which are too bitterly hostile to combine, while no one of them is strong enough to rule alone, — a state of things that makes it easy for the government to play them off against each other, and have its own way. In theory the parliamentary system is in force, but in practice the Emperor is so far from being a figurehead that since the present constitution was adopted he has actually refused to sanction a bill passed by both Houses of Parliament.[2] If we compare his position with that of the German Emperor we shall find that although the forms of parliamentary government are more closely followed at Vienna than at Berlin, yet, owing to his ability to manage the popular chamber, Francis Joseph is in fact quite as independent of popular control as William II.

Of the legal status of the ministers, little need be said, because their position in Austria is not peculiar. They have the usual right to speak in either of the houses,[3] and can address the commit-

The ministers.

[1] As usual, ordinances of this last kind lose their force after the meeting of the Parliament, unless that body consents to ratify them. *St. G. Reichsvertretung*, § 14; and see Ulbrich, pp. 115–16.

[2] This was the bill on Monastic Orders passed by the Reichsrath in 1876.

[3] *St. G. Reichsvertretung*, § 20.

tees;[1] but as we have already seen, their responsibility in the parliamentary sense is delusive. It may be added that the elaborate procedure for impeachment[2] has never been used. The bureaucracy, or body of civil officials, demands, on the other hand, especial notice on account of its extraordinary power. As a rule, its members enjoy a stable tenure of office, and can be dismissed only for crime, or by means of disciplinary proceedings.[3] A large proportion of them are Germans,[4] but the bureaucracy seems to bring politics very little into its work. Count Taafe, the late prime minister of Austria, who was himself trained in the administrative service, steadily refused to use it as a party tool, and made few appointments or removals for party purposes; and this although the Germans were generally opposed to him in Parliament.[5] The absence of the spoils system is all the more creditable, inasmuch as corruption appears to be deep seated in Austrian public life. I say appears to be, because there is nothing so difficult to determine in any country as the probity of the public officials, and the loudest

The bureaucracy,

non-partisan,

but corrupt.

[1] Law of May 12, 1873, on the Order of Business in the Reichsrath (R. G. B. 94; Geller, Bd. I. p. 114), § 7.

[2] Law of July 25, 1867, on Ministerial Responsibility (R. G. B. 101; Geller, Bd. I. p. 873).

[3] Cf. *Kais. Verord.*, March 10, 1860 (R. G. B. 64; Geller, Bd. II. p. 124); Gumplowicz, pp. 190–91. This does not, of course, apply to the high national or provincial positions.

[4] Cf. "Les Partis Politiques et la Situation Parlementaire en Autriche," Karel Kramar, *Ann. de l'Ecole Lib. des Sci. Pol.*, 1889, p. 342.

[5] See "Politik und Verwaltung in Oesterreich," Anon., *Unsere Zeit*, 1888, vol. ii. p. 444.

outcry by no means indicates the greatest venality. There is, however, one piece of evidence in Austria that is directly in point. Some years ago, when the manager of a railroad was prosecuted for making profitable contracts with himself, and taking a percentage on the gains of other contractors, a former Minister of State declared on the witness stand that the *Trinkgeld*, or tip, was peculiarly an Austrian institution, extending from servants and waiters to the very members of the cabinet.[1] If this is a fair statement, it makes one shudder to think what will happen in Austria if the parties ever get control of the bureaucracy, with its enormous power to interfere in every man's affairs.

Its enormous power.

The bureaucracy has, indeed, almost unlimited power; for, although the fundamental laws purport to guarantee certain personal rights, and one of them is framed for that especial object, yet in fact the guarantee is by no means thoroughly effective. Not only do these laws fail to impose a legal restraint on legislation, or render void a statute that infringes their provisions,[2] but some of their clauses are mere statements of general principles that still await legislation to carry them into effect, while others are limited and qualified, if not actually contradicted, by statutes which rob them of most of their value.[3] Thus the

[1] Rogge, *Oesterreich seit der Katastrophe Hohenwart-Beust*, vol. i. pp. 420–21. A similar revelation was made at the trial of the customs fraud cases in September, 1892. Sidney Whitman, *The Realm of the Habsburgs*, pp. 235–36.

[2] The courts of law can pass upon the validity of ordinances, but are especially forbidden to inquire into the constitutionality of statutes. *St. G. Richterlichegewalt*, § 7.

[3] Cf. Ulbrich, p. 38 *et seq.*

fundamental laws speak of a right to sue officials for injuries done in the exercise of their office,[1] but no law making this possible by providing a method of procedure has yet been passed.[2] Again the right of meeting and forming associations is recognized in principle;[3] but, except for trading societies and religious bodies belonging to particular sects, an association cannot in fact be formed without an official certificate, which may be refused in case its objects are illegal or dangerous to the state.[4] Copies, moreover, of the by-laws of societies,[5] of their reports to the members,[6] of their meetings,[7] of the business transacted,[8] of the officers elected,[9] and in the case of a political society even of the names of new members,[10] must be given to the government; and, in order to prevent any possible conspiracy, all correspondence between political societies is specially forbidden.[11] The police

over associations,

[1] *St. G. Regierungsgewalt*, § 12.

[2] Ulbrich, p. 67.

[3] "*Die österreichischen Staatsbürger haben das Recht, sich zu versammeln und Vereine zu bilden. Die Ausübung dieser Rechte wird durch besondere Gesetze geregelt.*" *St. G. All. Rechte der Staatsbürger*, § 12.

[4] Act of Nov. 15, 1867 (R. G. B. 134; Geller, Bd. II. p. 610). On appeal, the Reichsgericht is called upon to decide, not whether the objects are dangerous to the state, but only whether there are any grounds on which the officials could so consider them. (Dec. of R. G. Apr. 30, 1874, cited by Geller, Bd. II. p. 611.) On this subject of associations and meetings, see, also, Ulbrich, pp. 51–52; Gumplowicz, §§ 192–93.

[5] Act of Nov. 15, 1867, §§ 4–10.

[6] *Id.*, § 13.

[7] *Id.*, § 15.

[8] If demanded. *Id.*, § 18.

[9] *Id.*, § 12.

[10] *Id.*, § 32.

[11] *Id.*, § 33.

have also a right to be present at the meetings of associations,[1] with power to dissolve them or even break up the society itself, if anything is done which does not fall within its objects as stated in its by-laws.[2] As for public meetings held for any purpose by persons who do not belong to a regular association, the officials can virtually forbid them or disperse them at pleasure, so strongly does the dread of a free expression of opinion still maintain its hold.[3]

over the press, etc.

We find signs of this feeling in most of the countries on the Continent, but nowhere outside of Russia in a more marked form than in Austria. It crops up again in the restrictions on the press; for although the fundamental laws guarantee the right to express one's opinions, and declare that there shall be no censorship of the press,[4] yet the statutes provide that the business of printing shall not be carried on without a license, and that every number

[1] Act of Nov. 15, 1867, § 18.

[2] *Id.*, §§ 21, 24.

[3] "*Versammlungen, deren Zweck den Strafgesetzen zuwiderlauft, oder deren Abhaltung die öffentliche Sicherheit oder das öffentliche Wohl gefärdet, sind von der Behörde zu untersagen.*" Act of Nov. 15, 1867 (R. G. B. 135; Geller, Bd. II. p. 616), § 6. On appeal, the Reichsgericht decides not whether the public order or public weal were in danger, but only whether the officials had reasonable ground for supposing that they might be. (Dec. of R. G., April 30, 1875, and July 13, 1881, cited by Geller, Bd. II. p. 617.)

[4] "*Jedermann hat das Recht, durch Wort, Schrift, Druck, oder durch bildliche Darstellung seine Meinung innerhalb die gesetzlichen Schranken frei zu aussern.*

"*Die Presse darf weder unter Censur gestellt, noch durch das Concessionssystem beschränkt werden. Administrative Postverbote finden auf inländische Druckschriften keine Anwendung.*" *St. G. Al. Rechte der Staatsbürger*, § 13.

of a periodical must be submitted to the police before publication, so that it may be confiscated if it contains anything contrary to law. Moreover periodicals issued fortnightly or oftener cannot be started until a deposit has been made with the government to secure the payment of fines, and they can be suppressed if this is not kept good, a provision which hinders the publication of small newspapers, and gives the government a strong hold over the daily press.[1] Finally the constitutional right can be temporarily suspended altogether by a proclamation of the state of siege issued by the ministry.[2]

Other instances of statutory encroachment on the constitutional rights of the citizen might be given, but those already cited are enough to show how small is the restraint really placed by the fundamental laws on the power of the bureaucracy. In short, the Austrian police is — one cannot say the most vexatious, because that implies that its conduct is disliked by the people — but the most inquisitorial, the most minutely and severely vigilant in the world. It frequently orders a newspaper to leave out of its columns an article which it deems offensive, and it is even in the habit of giving notice to the daily press that some particular subject had better not be touched upon for the present.[3] It keeps up a careful supervision over

[1] Ulbrich, pp. 52–54 ; Gumplowicz, § 194. These provisions about the press are contained in the Act of Dec. 17, 1862; and in fact it is noticeable that all the statutes referred to in the text as limiting the constitutional rights of association, of meeting, and of the press, antedated the fundamental laws, but remained in force in spite of those laws.

[2] Cf. Ulbrich, pp. 115–16.

[3] See a letter of J. M. Vincent in the *Nation*, Dec. 10, 1891.

both citizens and strangers, watching their conduct and recording their movements. Its activity is, indeed, so rigorous and all-pervasive that every man habitually carries about his person an official certificate of his identity and good standing, just as a ship carries her papers on the high seas.[1]

Protection afforded by the Reichsgericht.

There is, however, a curious institution designed to protect the individual against arbitrary conduct on the part of the police. This is the *Reichsgericht*, whose composition and functions are peculiar, and in a strongly bureaucratic land not a little surprising.[2] In Austria we find the same dislike of any interference by the courts of law with the free action of the government that is almost universal on the Continent; and hence side by side with the ordinary courts there is a separate administrative tribunal, which has jurisdiction over the acts of officials.[3] The Reichsgericht decides conflicts of competence between these two classes of courts.[4] So far its functions do not differ from those of the tribunals of conflicts in other countries; but a most important part of the so-called administrative justice is also placed in its exclusive control, for it is directly charged with the duty of protecting the rights guaranteed by the fundamental laws from infringement by the officers of the govern-

[1] There is a vast amount of legislation about the keeping of registers, giving notices of change of residence, etc., and issuing passports and certificates. See Geller, Bd. II. pp. 456–521, 531–49.

[2] Cf. Gumplowicz, §§ 123–25.

[3] *St. G. Richterliche Gewalt*, § 15. This tribunal was organized by an Act of Oct. 22, 1875 (R. G. B. for 1876, 30; Geller, Bd. I. p. 858); Gumplowicz, § 121.

[4] *St. G. Reichsgericht*, § 2 (a).

ment.[1] The Reichsgericht is intended to be as secure as possible from official pressure, and hence the members not only hold their positions for life, but the Emperor can appoint at pleasure only the president, and must select each of the remaining twelve judges from a list of three persons presented by one of the Houses of Parliament, each house having a right to nominate candidates in this way for one half of the seats.[2] The court appears, in fact, to exercise its authority with great freedom, and although it has no means of giving effect to its decisions,[3] this does not prevent them from having a conclusive moral force. It must be remembered, however, that the Reichsgericht cannot prevent the bureaucracy from using any arbitrary powers granted by statute, even when these impair the rights guaranteed by the constitution, because, like every other Austrian court, it is forbidden to question the validity of a statute which has been promulgated in proper form.[4]

The *Reichsrath* or Parliament of Austria consists of two chambers, of which the upper one, called the *Her-*

[1] The provision speaks only of "political rights," *St. G. Reichsgericht*, § 3 (b); but the term is not used in the narrow sense of a right to take part in political action. See Geller's notes on the *St. G. All. Rechte der Staatsbürger*. The Reichsgericht has also jurisdiction over controversies between the central administration and the provinces, or between different provinces, in regard to the limits of their respective powers. *Id.*, § 2 (b) and (c); and finally it enforces claims against the state, so far as they are excluded from the ordinary courts, *Id.*, § 3 (a). The construction of this last clause has been the subject of a good many decisions. Cf. Geller, Bd. I. p. 848, n.

[2] *Id.*, § 5.

[3] Act of April 18, 1869 (R. G. B. 44; Geller, Bd. I. p. 850), §§ 39–40.

[4] *Id.*, § 30.

renhaus or House of Lords, is composed of the princes of the imperial blood, of the archbishops and prince-bishops, of the heads of those noble landowning families to which the Emperor grants an hereditary seat, and of members whom he appoints for life.[1] The power to create life members has been freely used on several occasions to insure the passage of measures which the ministry wanted to enact; and this is said to have so far affected the character of the body, that it has to some extent lost its aristocratic qualities, and become a governmental chamber rather than an assembly of nobles.[2] The rights of the two houses are the same, except that the budget and the bill fixing the number of recruits must be presented to the lower one first;[3] and it may be observed that as the popular chamber has not developed any great force, and has not succeeded in controlling the policy of the cabinet, the Lords do not feel obliged to give way in case of a disagreement.

The Reichsrath. The House of Lords.

The lower chamber of the Reichsrath, called the House of Representatives, is elected for six years, but can be dissolved at any time by the Crown.[4] The members were formerly chosen by the provincial diets.[5] This proved, however, to be a

The House of Representatives.

[1] *St. G. Reichsvertretung*, §§ 2–5.

[2] Rogge, *Oesterreich von Világos bis zur Gegenwart*, vol. iii. p. 205.

[3] Act of May 12, 1875 (R. G. B. 94; Geller, Bd. I. p. 114), § 5. The president of the upper house is appointed by the crown. In the lower he is elected by the house itself. *St. G. Reichsvertretung*, § 9.

[4] *St. G. Reichsvertretung*, §§ 18, 19. This power has been used frequently.

[5] *Id.*, § 7.

source of constant annoyance, because some of the races which were struggling for a greater degree of independence insisted that the Reichsrath did not legally represent the nation, on the ground that the fundamental laws had never been properly enacted, and whenever one of those races obtained control of a diet, it would refuse to allow the representatives to be chosen. A law was consequently passed in 1868 authorizing the government to order direct elections for members of the house in any province where the diet failed to choose them. But this was in turn evaded, for the hostile diets elected representatives, who thereupon refused to take their seats. The practice of declining to attend, or leaving in the middle of a session, is, indeed, a common political trick in all the Austrian legislative bodies, being used as a form of protest, and as a means of hampering the dispatch of business, or, if possible, preventing a quorum. The trouble with the refractory diets was finally brought to an end on April 2, 1873, by an amendment to the fundamental law on the Reichsrath, whereby the diets were deprived of all part in the matter, and the election was placed entirely in the hands of the provincial voters. The number of members was increased at the same time from two hundred and three to three hundred and fifty-three;[1] but the former principle of representing different interests in the community was retained.

This singular device, although a recent invention, is quite in harmony with the mediæval system of estates, out of which modern parliaments have grown.[2] The

[1] In 1896 this was increased to four hundred and twenty-five.

[2] The mode of election in some of the smaller German States is similar.

representatives for each province are distributed among five different classes of voters,[1] — the great landowners,[2] the cities, the chambers of commerce, the rural communes,[3] and the new general class, — and the provinces are divided into electoral districts for each of these classes, so that several of the smaller cities, for example, form a district by themselves. Except in the case of the cities and the chambers of commerce the different classes are never combined for the election of a representative, and thus a constituency is composed wholly of great landowners, or of cities, or of rural villages, never partly of one and partly of another.[4] As a rule, each district elects a single representative,[5] except in the case of the great landowners, who, save in Bohemia and Galicia, vote together for a whole province, and elect all their representatives on one ticket.[6] The seats are so distributed

The five classes of voters.

[1] The new fifth class was created in 1896.

[2] In Vorarlberg and Triest there is no electoral class of great landowners. In Dalmatia there is a class of highest taxpayers instead, and in the Tyrol there is also an electoral class of high ecclesiastics. *St. G. Reichsvertretung* (as amended by the Law of April 2, 1873), § 7, and the same is true of Bukowina. Geller, Bd. I. pp. 86, 139.

[3] The city of Triest being a province by itself has no rural constituency. *St. G. Reichsvertretung* (as amended in 1873), § 7.

[4] In eight of the smaller provinces the cities and chambers of commerce are combined. *Ibid.* The voters in the first four classes are not excluded from voting in the new general class, for which, however, separate districts are provided.

[5] Occasionally the cities or chambers of commerce return two members in one district, and one district of Vienna returns four.

[6] In the Tyrol and Bukowina the ecclesiastical electors choose their representative separately. A full table of the distribution of representatives and of the districts by which they are elected will be found in the appendixes to the electoral laws of April 2, 1873, Oct. 4, 1882, and June 14, 1896. (See Geller, Bd. I. pp. 102–13, and 1073–75.)

among the five classes that eighty-five members are elected by the great landowners,[1] one hundred and eighteen by the cities,[2] twenty-one by the chambers of commerce, one hundred and twenty-nine by the rural communes, and seventy-two by the general class.

The franchise in the various classes is naturally very different. In the general class it includes substantially all men not in domestic service; in the cities and rural villages it extends to all municipal voters who pay five florins, or about two dollars, in taxes;[3] while for the class of great landowners the qualification is the payment of a tax, ranging in the different provinces from fifty to two hundred and fifty florins,[4] and assessed on land held by a noble or feudal tenure.[5] It is somewhat strange to find that in this class women can vote,[6] and that corporations acting through their representatives can do the same.[7] Another difference between the classes is to be found in the fact that in the rural communes alone the election is indirect, being carried on

[1] Not only is the distribution of seats between the classes based on the payment of taxes as well as on numbers, but the same is true of the allotment of seats among the different provinces. Gumplowicz, § 85.

[2] The cities and chambers of commerce unite in the choice of nineteen members, which I have credited entirely to the cities.

[3] Law of Oct. 4, 1882 (R. G. B. 112), § 9. The report accompanying the bill to create the new general class stated that the total number of voters would be increased thereby from 1,732,257 to 5,333,841.

[4] See the summary of the provisions of the various Landesordnungen, annexed to the Patent of Feb. 26, 1861, in Geller, Bd. I. pp. 151–52.

[5] Except in Salzburg, Gorz, and Istria. *Ibid.*

[6] Law of Oct. 4, 1882, § 9.

[7] Law of April 2, 1873 (R. G. B. 41), § 13. Men in active military service can also vote in this class, though excluded from the franchise in the others. *Id.*, § 14.

by means of electors, one of whom is chosen for every five hundred inhabitants.[1] It is worth while to notice that the separation into classes in no way applies to the candidates themselves, for every man who possesses the franchise in any class is eligible either by that class or any other in any part of Austria.[2]

The Reichsrath must be summoned to meet every year,[3] and its powers are similar to those of other parliaments.[4] Each of the houses can pass resolutions and addresses, examine the legality of the acts of administrative officials, appoint commissions, interpellate the ministers,[5] and even impeach them.[6] All statutes and appropriations,[7] all treaties of commerce, and all treaties that lay an economic burden on the state or impose a duty on the citizen,[8] require the consent of both houses, with one very curious exception. In case of repeated disagreements between them over items in an appropriation

The powers of the Reichsrath.

[1] *St. G. Reichsvertretung* (as amended in 1873), § 7, C; Laws of April 2, 1873, § 10; June 14, 1896, Art. II. C. This is also true of the new general class in districts that are purely rural. An absolute majority is required for election in all the classes; and if this is not obtained, a second ballot is taken which is confined to the candidates highest on the poll. *St. G. Reichsvertretung, Ib.;* Law of April 2, 1873, §§ 49–50.

[2] *St. G. Reichsvertretung, Ib.*, E. [3] *Id.*, § 10.

[4] It is divided in the same way by lot into sections, which make a preliminary examination of elections (Law of May 13, 1867, R. G. B. 94), and choose the committees, when they are not elected by the whole house. Dickinson, *Constitution and Procedure of Foreign Parliaments*, 2d ed. p. 350.

[5] *St. G. Reichsvertretung*, § 21. The two houses also appoint a joint commission, which helps to manage the public debt. *Id.*, and see Laws of Dec. 13, 1862, Feb. 29, 1864, and June 10, 1868. (Geller, Bd. I. p. 120 *et seq.*)

[6] Law of July 25, 1867, § 7 *et seq.*

[7] *St. G. Reichsvertretung*, § 13. [8] *St. G. Regierungsgewalt*, § 6.

bill, or over the size of the contingent of recruits for the army, the smallest figure voted by either house is considered as granted, — a habit strangely at variance with our ideas of parliamentary procedure.[1]

Its competence limited by that of the provincial diets.

The powers of the Reichsrath extend, however, only to matters falling within its competence, and that is limited by the privileges vested in the provincial legislatures. These privileges do not depend on the pleasure of the Reichsrath, but are prescribed by the fundamental laws, which declare that all matters not specially placed under its control are reserved for the diets of the provinces.[2] Austria, therefore, while theoretically a unitary State, has in practice very much the aspect of a confederation. The subjects within the sphere of the Reichsrath are carefully enumerated, and include among other things the whole domain of civil and criminal law; but the catalogue is so long, so many topics are included in the list, and so few omitted, that it is much simpler to reverse the method adopted in the constitution and describe the powers reserved to the provinces. These

The powers of the diets.

may be divided into two classes, in the first of which the authority of the diet is absolute, while in the second it is exercised in subordination to general rules prescribed by the Reichsrath.[3] The most important matters in the first class are: legislation concerning local government and agricul-

[1] *St. G. Reichsvertretung*, § 13.

[2] *Id.*, §§ 11, 12.

[3] For the powers of the diets, compare *St. G. Reichsvertretung*, §§ 11, 12, and the Landesordnung of Feb. 26, 1861, for Lower Austria (Geller, Bd. I. p. 125), §§ 16–25. Cf. Ulbrich, pp. 75–77; Gumplowicz, §§ 99–101.

ture; the control of the high and polytechnic schools; the provincial property, and charitable institutions maintained by the province; the raising of money by additions to the direct state taxes; and finally changes in the organization of a diet or the method of its election.[1] The second class includes legislation about churches, primary schools and gymnasia, and any matters within the competence of the Reichsrath, so far as that body chooses to delegate to the provinces the regulation of details.[2] The practice of making general rules for the whole Empire in the Reichsrath, and leaving to the diets the task of enacting subsidiary laws to carry them out, does not work well, because some of the diets are apt to be hostile to the government, and hence either will not vote the required laws at all, or pass them in such a form that they cannot receive the approval of the Emperor. A great deal of difficulty arose from this source over the liberal school law of 1868, which several of the diets refused to supplement with the legislation necessary to give it effect. In some places the matter remained unsettled for many years, and the government felt obliged to stretch its authority by enacting the required provincial laws by ordinance, — a proceeding of which the constitutionality was very seriously questioned.

Although the legislative power of the diets is small, their political importance is very great, owing to the

[1] This last requires a three quarters presence and two thirds vote. Cf. L. O., Feb. 26, 1861, Lower Austria, § 38.

[2] The diets are also required to give their opinions on any questions submitted to them by the officers of the crown.

habit of using them as a sort of intrenchment in the war between the races. It is necessary, therefore, to consider their organization.

The organization of the diets.

In each province the diet consists of a single Chamber, elected for six years, and containing members chosen by the four classes of great landowners, cities, chambers of commerce, and rural communities, with which we have already become familiar in treating of the Reichsrath.[1] The relative proportion of the different classes varies a good deal according to the character of the province, but on the average it is nearly the same as in the central parliament, except that the rural communes have a slightly larger, and the cities a slightly smaller, share of the seats. In addition to the elected members, the rectors of the universities, the bishops of the Catholic church, and in one or two provinces those of the eastern Greek church, have seats by virtue of their office. The size of the diets varies a great deal, and runs from that of Bohemia, with its two hundred and forty-one seats, down to little Vorarlberg, which has only twenty. The suffrage is essentially the same as in the case of the Reichsrath, and every man who enjoys the franchise in the province is eligible in any one of the four elected classes.[2]

[1] In Triest, the functions of a diet are exercised by the city council. *Verfassung der Stadt Triest*, in the Patent of April 12, 1850 (R. G. B. 139; Geller, Bd. I. p. 187).

[2] For the composition of the various diets, see the Landesordnungen of Feb. 26, 1861, summarized with the various amendments in Geller, Bd. I. p. 125 *et seq.* For the districts, franchise, and method of election, see the Landtags-Wahlordnungen, annexed thereto (Geller, Bd. I. p. 138 *et seq.*).

The profound distrust of the organs of local self-government, which is not uncommon in Europe, is shown in the provision that forbids the diets to communicate with each other, or to issue any publications.[1] Such a distrust is not unfounded in Austria, for the diets are turbulent bodies, and it often requires a stern exercise of authority to keep them within bounds. The power of the Emperor to control them is, indeed, very great. Not only do their measures require his sanction,[2] which is often refused, but he also appoints the presiding officer, who arranges the order of business,[3] can forbid the consideration of any matters not within the competence of the diet,[4] and when so directed by the crown can close the session or dissolve the diet at any time.[5] This right is used very freely; and it has not infrequently happened in periods of great excitement, when a diet has become a centre for political agitation, that a session has been closed almost as soon as it was opened.

Power of control on the part of the crown.

It has been said that although Austria is virtually a federal state so far as legislation is concerned, yet as regards the executive branch of the government, which in the Empire is the more important of the two, it is centralized, be-

Administration of the province.

[1] *E. g.* The Landesordnung, of Feb. 26, 1861, for Lower Austria, § 41.

[2] *Id.*, § 17.

[3] *Id.*, §§ 4, 10, 36. This officer in most of the provinces is called the *Landmarschall;* in others the *Landeshauptmann*, *Präsident*, or *Oberstlandmarschall.*

[4] *Id.*, § 35.

[5] *Id.*, § 10.

cause the provincial executive is not responsible to the diets.[1] To a great extent this is true; for the numberless matters that form a part of the general administration of the state are in the hands of a Statthalter or Landespräsident, appointed by the crown, and independent of local control.[2] But, on the other hand, the executive power of the province for affairs that are considered strictly local is vested in a Landesausschuss, or provincial committee.[3] The president of the diet, who is *ex officio* the chairman of this body, is alone appointed by the Emperor; the other members — four, six, or eight in number — being elected partly by the diet as a whole and partly by the separate classes of which the diet is composed.

The political issues in Austria.

Having now considered the structure of the Austrian government, let us take a glance at the condition of politics. The two great questions that vex the nation are those of religion and of race; for although there are other points of dispute, such as centralization on the one hand and local self-government on the other, these issues have their origin and find their meaning chiefly in the two main questions.

The church question.

Nearly four fifths of the people of Austria are Catholic; and, as in other Catholic countries, the last half of the present century has witnessed a struggle with Rome. The leaders of the

[1] Karel Kramar, "La Situation Politique en Autriche," *Ann. de l'Ecole Libre des Sci. Pol.* 1891, p. 662.

[2] Cf. Law of May 19, 1868 (R. G. B. 44; Geller, Bd. I. p. 946).

[3] *E. g.* Landesordnung of Feb. 26, 1861, for Lower Austria, §§ 11–15, 26–32.

clerical party are to be found among the bishops and the nobles, a large and influential part of the aristocracy being devotedly attached to the church. In spite of the bitter opposition of this party, the Liberals, when they came to power after the war with Prussia, passed a series of anti-clerical laws, freeing the schools from the control of the clergy, establishing civil marriage, and putting the relations between church and state on a basis more in accordance with modern ideas. But as yet the religious question is by no means at rest, and it will probably be long before it ceases to trouble politics, and furnish a ground for party division.

The race question.

More difficult, however, than the religious problem, and even farther from a solution, is the question of race. We have seen how many different races there are in Austria, and it is not too much to say that each of these is not only anxious to be entirely free from control by the others, but if strong enough wants supremacy for itself. It is therefore clearly impossible to content them all, and the present policy is a sort of makeshift that contents none of them. The most powerful, the richest, the best educated, and the most widespread of the races, is the German, which assumes that Austria is, and ought to be, essentially a German country. This people would like to see its own tongue the official language in all the provinces; but although the most powerful of the nationalities, it is weakened by a division into Liberals and Clericals, and still more by the tendency of the Liberals to fight among themselves.

The attitude of the Germans;

It is needless to say that the other races do not agree to the assumption that Austria is essentially German. On the contrary, they are incessantly striving for greater recognition of their own rights. The most important of them, because the most numerous and the most aggressive, is that of the Czechs of Bohemia and Moravia; but the Czechs have also suffered from a quarrel among themselves, the men of more moderate and more aristocratic views, called the Old Czechs, being bitterly opposed by those of more violent and democratic opinions known as the Young Czechs. The latter are of comparatively recent origin, but they have got the upper hand since 1890, when the Old Czechs agreed to a compromise on the race question, which was unpopular in Bohemia.[1] Their views are extreme; for they demand what they call the restoration of the crown of Saint Wenceslaus, which means a union of Bohemia, Moravia, and Silesia as a separate kingdom, connected with the rest of Austria only by a tie similar to that which binds Austria and Hungary together. However well-grounded such a claim may be from an historical point of view, it can hardly be allowed to-day, on account of the danger of breaking the monarchy to pieces, and reducing it to the rank of a second-rate power.

of the Czechs;

The next most influential race is that of the Poles, who have the advantage of forming a compact mass in a single province, and who have had the wisdom to understand the true basis of political

of the Poles;

[1] Ladislas Pinkas, "La Question Tchèque," *Ann. de l'Ecole Libre des Sci. Pol.* 1894, p. 545.

power in Austria. They see that their fortunes must depend on the goodwill of the crown, and hence they are ready to vote with the government on important measures, in consideration of favors at home. Although they are divided in Galicia into an aristocratic and a democratic party, they present a united front at Vienna; and as it is known that they are ready to assist any government that treats them kindly, all parties are willing to buy their support with concessions. They have not obtained, it is true, all the autonomy they desire, but their political position is singularly fortunate, because they do not excite either jealousy or dread among the Germans and the Hungarians to the same extent as the various branches of the great family of Slavs. This is due to the fact that the Slavs — including the Czechs, who claim to belong to the race — form together very nearly a majority of the whole people of the monarchy, and a union of them all in one great party is the greatest danger that the Germans and the Magyars have to fear. The non-Slavic origin of the Poles insures, moreover, their absolute loyalty to the monarchy; for in their exposed situation they would infallibly come under the yoke of Russia if Austria-Hungary should cease to be strong enough to protect them.

The other important races in Austria, the Italians and the southern Slavs, have their hands pretty well filled by the quarrels among themselves and with the Germans. The Italians from the southern Tyrol would, indeed, like their part of the province separated from the rest; but the

Of the Italians and Southern Slavs.

Slowenians and other Slavs are for the most part too anxious for help from the central government to pursue an active policy of disintegration. In short, the races that inhabit the coast of the Adriatic are chiefly occupied with struggles for supremacy over each other; and although insurrections have more than once broken out in Dalmatia, they have been caused by a dislike of universal military service rather than by a desire for independence.

The conflict of tongues.

The most common form the race question has assumed in Austria-Hungary is that of a struggle over the use of the different languages by officials and in the schools. At times this has been carried to a point that is fairly ludicrous. When the Hungarians obtained autonomy in 1867, they insisted that Magyar should be exclusively used both in their parliament and in the delegation sent to Vienna to consult on the affairs of the joint monarchy. This was an heroic determination, because it prevented Baron Beust, the Imperial Chancellor, from addressing the delegation without the aid of an interpreter, and because some of the members themselves were much more familiar with German than with Magyar. One of the leading Hungarian statesmen was, indeed, obliged to decline a seat on the committee on finance, saying that although he knew the language well enough to make a set speech, he was not sufficiently familiar with it to answer unexpected questions in the course of debate.[1] The railroad officials were also compelled to speak Magyar, and it is related that a station-master

[1] Rogge, *Oesterreich von Világos bis zur Gegenwart*, vol. iii. p. 94.

and an engineer were seen making frantic attempts to understand each other, until in sheer desperation they violated the law and fell into German, which both of them could talk perfectly well.[1] Those persons who are always lamenting that sentiment has died out, and that people are actuated to-day only by material motives, can look at Austria and see a striking example to the contrary. It is clear that the Slowenians, for example, would be far better off from an intellectual and a material point of view if they all spoke German. The opportunities of their children to improve their condition in life, to increase their education, their wealth, and their influence, would be very much greater if they gave up their local dialect, and all used a language which is understood by the commercial and cultivated classes in Austria. Purely worldly considerations would therefore dictate a policy like that of the Romansh-speaking parts of the Swiss canton of the Grisons, where every child is obliged to learn German at school. But all these nationalities feel, and feel rightly, that their existence as distinct races depends on the preservation of their native tongues, and they are ready to sacrifice a chance of material prosperity to that end.

Failure to solve the problem of race.

The problem of race has long been a burning one in the monarchy, but outside of Hungary it does not seem to be any nearer a solution than it was at first. The difficulties are exceedingly great, perhaps too great for any ruler to overcome, yet to a foreign observer the course of the

[1] Rogge, *Oesterreich seit der Katastrophe Hohenwart-Beust*, vol. i. p. 101.

Emperor, in whose hands the destinies of the country really lie, would appear to lack something of the necessary foresight and persistence. Francis Joseph is more truly beloved by his people than any other sovereign in the world, and he has devoted his life to the welfare of the state; but the results of his policy in Austria have not been altogether fortunate, and one cannot help attributing this, in part at least, to the series of short-lived experiments and makeshifts which have stimulated the hopes of every faction and satisfied the desires of none. A sketch of Austrian history in recent years will illustrate this fact, and at the same time will throw some light on the character of politics in the Empire.

Recent history of Austria.

After the war with France in 1859 it became evident that the existing autocratic form of government could last no longer, and new plans were adopted and changed so rapidly that within a single twelvemonth Austria was given three different constitutions, none of which set her difficulties at rest.[1] In 1866 came the war with Prussia and Italy, and again the state was remodeled. Hungary was set adrift, and the new fundamental laws were enacted for the rest of the monarchy. At this time the hostility between the different races was already fully developed, and was the most important factor in determining their attitude toward the new treaty with Hungary. The Germans alone were decidedly in favor of the treaty, and hence Baron Beust, who was trying to carry it through, was obliged to favor them.

The Reichsrath of 1867.

[1] The Patent of March 5, 1860; the Diploma of Oct. 20, 1860; and the Patent of Feb. 26, 1861.

It was in fact doubtful whether the diets controlled by the other races would consent to send representatives to the Reichsrath at all. This was especially true of Bohemia and Moravia, where the Czechs formed a majority in the diets. Now Bohemia furnished more than a quarter, and Moravia over one tenth, of the whole number of deputies to the central parliament; and as a two thirds vote was required to amend the Patent of February 26, 1861, it was obvious that to insure the success of the imperial plans, the members from these provinces must not only be present, but must support the government. Beust therefore resorted to a measure which was afterward repeated with success on several occasions. Early in 1867 he dissolved the diets of these two provinces, and prevailed upon the great landowners, who hold the balance of power, and who are always susceptible to the influence of the court, to vote for Germans. By this means he obtained a German majority in each of the two diets, and procured the election of representatives, most of whom were in favor of his policy. The few Czechs chosen refused indeed to come to Vienna, but none of the other races followed their example,[1] and Beust was able by the end of the year to enact the treaty with Hungary and the fundamental laws for the Austrian half of the monarchy.

Under the new arrangement Baron Beust retained only the administration of the matters common to both Austria and Hungary, while each of those countries

[1] The Poles were induced to attend by concessions about education, especially in the matter of language.

was given a separate cabinet of its own. Now the German Liberals, who were opposed by the Feudal-Clericals, the Italians, the Slowenians, and the Poles, had obtained a majority in the Reichsrath, and in accordance with the principle of parliamentary responsibility, which had been proclaimed, they were entitled to have ministers appointed who agreed with their opinions. On January 1, 1868, therefore, a cabinet known as the Ministry of Doctors was formed, chiefly from members of that party, with Prince Charles Auersperg at its head.[1] For a while matters went smoothly at Vienna; and although the anti-clerical laws on marriage, schools, and the rights of the different sects, which were enacted early in the year, provoked a great deal of hostility on the part of the clergy, they strengthened the bond between the government and the majority in the Reichsrath.

The Ministry of Doctors, Jan. 1, 1868.

The course of politics did not run so quietly in the provinces, for several of the diets refused to enact the school laws that were necessary to carry out the new imperial statute, and in some places serious trouble was caused by the race question. In Galicia the Poles who controlled the diet passed a resolution demanding a degree of independence amounting almost to a separation from the other provinces. Strangely enough, this did not prevent their deputies from sitting in the Reichsrath, and even voting with the government on some critical measures,

Troubles in the provinces.

[1] The cabinet contained a Liberal Pole, Count Alfred Potocki. Auersperg resigned in September, 1868, in consequence of the troubles in Galicia, but the rest of the ministers retained their positions, and in April, 1869, Taafe was made the head of the cabinet.

in return for concessions about the use of the Polish language and about railroad matters. In Bohemia and Moravia, on the other hand, a conflict with the diets was avoided, thanks to the vigorous action of Baron Beust in the previous year. The Czech minority in these bodies, however, continued bitterly hostile, and protested in the customary manner by refusing to attend. The seceding members in Bohemia then signed a declaration, stating that the lands belonging to the Bohemian crown had nothing in common with the rest of Austria, except the dynasty; and shortly afterwards a riot broke out in Prague, which was followed by a partial suspension of the freedom of meeting and of the press. At the same time the diets of the southern provinces were disturbed by the usual struggles between the Slavs, the Italians, and the Germans. During the following year troubles of another kind arose, which did more to weaken the reputation of the ministry. A serious insurrection, caused by the new compulsory military service, occurred in Dalmatia, and this was followed by extensive strikes at Vienna and Triest.

The Liberals become divided, 1869.

All these difficulties might, perhaps, have been overcome, and it is altogether probable that they would not have shaken the position of the cabinet, if the Constitutional party, as the German Liberals were called, had only held together. But before long, signs of division appeared in their ranks. A radical section began to develop, which was not willing to follow the lead of the ministers in all matters; and finally there came a split in the cabinet itself. Count Taafe, the head of the ministry, thinking

that the course of the government during the last two years had tended to sharpen rather than soften the hostility of the different races, wanted to pursue a policy of conciliation, and favored a moderate revision of the constitution for that purpose, — a view which most of his colleagues did not share. The conflicting opinions were laid before the Emperor, and as both branches of the Reichsrath appeared to favor the majority of the cabinet, Taafe with Potocki and one other minister resigned on January 15, 1870. Their places were filled, but the reorganized cabinet had a short existence. It did not get on well with the Reichsrath, and at last the Poles and Slavs, becoming provoked, refused to attend, and left barely a quorum behind them. At this time, it will be remembered, the deputies were still chosen by the diets, so that the dissolution of a diet involved a fresh election of deputies. The ministers proposed, therefore, to dissolve the diets whose deputies had refused to sit, in order to get new members elected in their stead, and thus restore the efficiency of the Reichsrath. The Emperor, however, feeling that he might be drawn into the impending war between Germany and France, and especially unwilling on that account to exasperate any part of his subjects, refused his assent, and on April 14 the cabinet resigned.

The cabinet breaks to pieces.

Potocki and Taafe now returned to power, and formed a ministry containing men of various nationalities. They wanted to conciliate all the races, but in fact they did not receive the cordial support of any party, and after making fruitless attempts to reach an

understanding with the Czechs and the Poles they dissolved the Reichsrath and all the diets, in the hope of getting a stronger support for their programme.[1] Nothing, however, was gained by the move. The clerical and race feeling was as violent as ever, and the majorities in the diets became, if anything, more unfavorable than they had been before. In Bohemia, indeed, the Czechs, with the help of the great landowners, succeeded in getting control of the diet. At the meeting of the Reichsrath in September, the speech from the throne urged the necessity of so revising the constitution as to reconcile the wants of the provinces and the Empire; but it did not meet with a favorable response, for the German Liberals were bitterly hostile to the proposal, and although they had lost ground in the new elections, they still had a majority in the Reichsrath, owing to the absence of the Czechs who refused to attend. In November, addresses condemning the federalist tendencies of the government were actually voted by both houses, and led to the resignation of the ministers. The policy of the cabinet had certainly not been a success. It had alienated the Germans without winning over the Czechs, who remained intractable in spite of the conciliatory attitude of the ministers. The attempt to allay the hostility between the races had, indeed, been made at an unfortunate time, for the Franco-Prussian War and the events in Italy had greatly intensified race feeling in Austria.

Potocki and Taafe form a cabinet, but fail to get a majority in the Reichsrath.

[1] The Bohemian diet was dissolved on July 30, the others on May 21. The new Bohemian diet having refused to choose deputies, direct elections were ordered on Oct. 6, in accordance with the law of 1868.

Experiment of a reactionary ministry under Hohenwart, 1871.

The Emperor then tried another experiment. Instead of submitting to the Liberal majority, as the crown would have done in a strictly parliamentary government, he went to the opposite extreme, and on February 7, 1871, turned to Count Hohenwart, the representative of the Feudal-Clerical and Nationalist elements in the state. He charged the cabinet, it is true, as one standing above party, to unite all the races in the country on the basis of the constitution; but the new departure was believed to be the work of the aristocratic and federal factions, and its real meaning was perfectly well understood. The cabinet brought in a bill increasing greatly the powers of the diets at the expense of the Reichsrath. Of course it was voted down by the Liberals in the House of Representatives, but the ministers had an effective weapon in their hands.[1] In August they dissolved all the diets controlled by the Liberals, and with the help of the great landowners succeeded in capturing two of them. In this way they not only secured a majority in the lower house of the Reichsrath, but with the help of the Czechs could command the two thirds required for an amendment of the constitution. A rescript was thereupon issued suspending the fundamental laws in Bohemia, and acknowledging the peculiar rights claimed for that province; and bills designed to give greater political power to the Czechs were laid before the diet. The excitement among the

[1] The Liberal majority might, perhaps, have forced the cabinet out of office by refusing to vote the budget, but they were not well enough disciplined for that.

Germans throughout Austria became intense, while the ambition of the other races knew no bounds. The diets of Bohemia and Moravia voted addresses demanding a position for their part of the country similar to that of Hungary.[1] The southern Slavs and the Poles followed suit, and asked for like privileges for themselves. Austria seemed to be on the point of breaking to pieces when Beust, the Imperial Chancellor, and Andrassy, the head of the Hungarian government, fearing the consequences to the nation, persuaded the Emperor to check the mad career of his minister. Francis Joseph himself seems to have felt that matters were going too far, and several members of the cabinet could not follow their chief in his approval of the Czechish claims. Hohenwart resigned after holding office a little over eight months; and again the Emperor turned completely round, and appointed ministers who were in sympathy with the Constitutional party.[2]

Constitutional ministry under Auersperg. Nov., 1871–Feb., 1879.

The new cabinet, which is known by the name of its president, Prince Adolf Auersperg, began actively to undo the work of its predecessor. Five of the diets were at once dissolved, and in three of them the Liberals obtained the control. The process was repeated a little later in Bohemia, where, as usual, the great landowners turned the scale in favor of the administration; and by these means the ministers obtained a majority for their party in the Reichsrath. The effect of the change of gov-

[1] The most important of these was the famous *Fundamentalartikel.*

[2] The cabinet was not, however, composed of the leaders of the party.

ernment was very marked. The nationalist agitation subsided, the Czechs in particular losing a great deal of their power by splitting into two mutually hostile groups; and although a series of laws were passed restricting the authority of the clergy, the friction with the church diminished also. A grievous source of annoyance, moreover, was taken away by the enactment of the electoral law of 1873, which took the choice of the representatives in the Reichsrath entirely out of the hands of the diets, vesting it directly in the four classes of constituencies. This was a great improvement, for it deprived the diets of a means of opposition that had been grossly abused, and at the same time relieved the provinces of the commotion caused by repeated dissolutions of their legislatures. The vote upon the bill is noteworthy, because it illustrates the peculiar result of Austrian political habits. The measure which had been under discussion for years involved a change in the fundamental laws, and hence required a two thirds vote; but the Czechs, Poles, and Slowenians were strongly opposed to it, and the Germans alone did not make two thirds of the lower house. The hostile races, therefore, could easily have prevented the passage of the bill. Instead of doing so, however, the Czechs refused to sit in the Reichsrath at all, because they would not acknowledge its legality, and thus left the Germans with the necessary two thirds majority, and threw away their most effective political weapon.

Thanks to the firm but moderate course pursued by the ministers, they were enabled to remain in office for

a longer period than any previous cabinet since the war with France in 1859, and this in spite of the severe commercial crisis that broke upon the country in 1873. They might, indeed, have kept their places longer still if the Constitutional party had understood the real nature of Austrian politics. This party failed to see that the Emperor holds the ultimate power in his own hands; that owing to his right to dissolve the various legislative bodies, to his influence with the great landowners, and to the vast authority of the bureaucracy, he can obtain a majority in the Reichsrath in favor of almost any cabinet he chooses to appoint. If the German Liberals had learned that lesson from the experience of the last five years, they would have realized that they ought to be pliant in matters on which the Emperor had set his heart. Instead of this, they voted against bills which the court considered essential to the maintenance of an efficient army, and they made a great deal of difficulty about the joint tariff and the National Bank in the treaties with Hungary in 1877, although the security of the state depends upon harmony between the two halves of the monarchy. The party also failed to see that in the unsettled condition of affairs it ought to sacrifice all minor details to the vital questions, and give its hearty support to any cabinet that agreed with it in general principles. But like all German Liberals the Constitutionalists wanted to be independent, and could not resist the temptation to criticise every measure presented to them. The interest of the party clearly demanded that all its

The German Liberals offend the crown, and quarrel with the cabinet.

members should cling together and form a solid phalanx to protect the ministers from any attack on the part of the Federalists, whether made through the court or in the Reichsrath. By such a course they might have retained their supremacy for an indefinite time. But they did nothing of the kind. On the contrary, they broke into three factions, and the deputies in the Reichsrath belonging to each of these formed, according to the Austrian custom, a separate association, or "club," for the discussion of public questions and the determination of the way the members should vote in the house. The Liberal clubs grew more and more independent of the ministry, criticised it, blamed it for not taking the clubs into its confidence, and repeatedly voted against it, until the cabinet found itself so completely unable to command a majority in the Reichsrath that it could no longer maintain its position. In 1877, and again the next year, the ministers tendered their resignations, which, however, the Emperor refused to accept; but finally, after the war between Russia and Turkey, and the treaty of Berlin that followed it, a part of the German Liberals carried through the House of Representatives an address censuring the foreign policy of the government. This was the finishing blow, and on February 6, 1879, the cabinet broke up. Auersperg, with one of his colleagues, resigned, and Taafe again received a portfolio. The cohesion between the Liberal clubs had now disappeared so thoroughly that a stable majority of any kind was no longer possible, and on May 22 the lower house was dissolved. The elections proved fatal to

Auersperg's cabinet breaks up, 1879.

the German Liberals, who lost no less than forty-five seats, thus forfeiting their majority in the Reichsrath, and with it their position as the dominant party in the state. As soon, therefore, as the result of the vote was known, the ministers resigned, and Taafe formed a new cabinet of quite a different character. The fall of Auersperg and the return of Taafe to power mark the close of the first period of Austrian parliamentary history. The era of experiments, of extremes, of cabinets representing the aspirations of particular races, comes to an end, and the second period begins.

Taafe's ministry, 1879–1893.

During much the greater part of the twelve years that had elapsed since parliamentary government had been introduced, the German Liberals had been in control of the administration, but now an entire change took place. Taafe intended to stand above all parties and races, and his new cabinet contained a German Liberal, a Clerical, a Pole, and even a Czech; but the Liberals who had enjoyed the whole power for the last seven years were not in a mood to be satisfied with a small fraction of it. At the first concessions made to the other races, they went into opposition, and their representative in the cabinet resigned. The loss to the government by the defection of the Left was, however, partly compensated by a change in the attitude of the Czechs. The members of this race had hitherto refused to sit in the Reichsrath on the ground that it had no right to act as a parliament for the whole Empire. Such a policy, known as that of passive resistance,

The German Liberals go into opposition.

The Czechs take their seats and favor the cabinet.

was rational so long as the deputies to the Reichsrath were chosen by the diets, for whenever the Czechs had control of the Bohemian diet they could refuse to elect deputies at all, and the absence of any representatives from the largest of the provinces was a source of moral weakness for the government; but after the law of 1873 had established direct elections, the policy lost its force, because German members from Bohemia were always present, and what had been a protest on the part of a whole province became only a protest by individual deputies.[1] Nevertheless the Old Czechs clung to the policy of passive resistance, and although the Young Czechs condemned it, and wanted to substitute an aggressive political campaign, their influence was not great enough to prevail until the long administration of Prince Auersperg had taught every one the futility of the old course. When Count Taafe formed his cabinet, the Czechs for the first time took their seats in the Reichsrath, and, what is more, the Old Czechs, who comprised at that date almost all the deputies of their race, became firm adherents of the government.

The Right supports Taafe, but fails to direct his policy.

The position of the parties was thus almost completely reversed. The Left was now opposed to the cabinet, which relied for its support on the Poles, the Old Czechs, the Slavs, the Clericals, and the Conservatives. These various groups, or "clubs," collectively known as the Right, were very far from composing a united major-

[1] Cf. Ladislas Pinkas, "La Question Tchèque," *Ann. de l'Ecole Libre des Sci. Pol.* 1894, p. 545.

ity.[1] On the contrary, it is hardly possible to find a single principle on which they all agreed. Some of them wanted to put the control of the schools into the hands of the church, and others did not. Most of them were anxious to increase the local autonomy of the provinces, while a few believed in centralization. Under these circumstances, the cabinet could hardly have been expected to carry out the wishes of its supporters, and it made no serious attempt to do so. Taafe professed, indeed, to hold aloof from parties, and the various races supported him not so much because he favored them, as because he did not favor the Germans at their expense, the real bond of union between the different sections of the majority being the dread of another ministry of German Liberals. The Right was not strong enough or sufficiently united to force upon the ministers a new programme, and on the other hand the two most important branches of the administration — the bureaucracy and the army — were decidedly hostile to any change that would involve a decentralization of the state. The substantive policy of the government, therefore, did not differ much from what it had been in the preceding years, for the concessions made to the Czechs and the Slavs, as a reward for their support, were not great.[2] A forcible illustra-

[1] For a description of the various "clubs" in the Reichsrath, see "Les Partis Politiques et la Situation Parlementaire en Autriche," *Ann. de l'Ecole Libre des Sci. Pol.* 1889, p. 342, and Sentupéry, *L'Europe Politique*, pp. 297–306. See, also, "The Statesmen of Europe — Austria," *Leisure Hour*, 1891, pp. 516, 594.

[2] Some slight concessions were made in the matter of language. Moreover, by the Act of Oct. 4, 1882, § 9 (Geller, Bd. I. pp. 1071–72), the

tion of the strange relation of the parties to the cabinet was presented by the question of foreign policy, the Czechs and Slavs who voted with the ministers disliking the triple alliance, while the Germans, who were in opposition, approved of it heartily.

Taafe's system increases the influence of the crown.

The most marked result of Taafe's rule was an increase in the influence of the crown and the reduction of the Reichsrath to a tool in the hands of the government. Every one learned that the Emperor had a majority always at command, because if one group turned against him he could easily conciliate another; and hence the parties were disposed to avoid everything that might offend the court. Now, Taafe, who had been an early friend of the Emperor, was known to possess his entire confidence, so that any attempt to overthrow the cabinet was manifestly futile. The clubs of the Right, therefore, strove only to keep in its good graces, and pick up such crumbs of favor as they could get.[1]

His policy begins to break down.

This curious parody of parliamentary life, in which the several parts of the majority were not in harmony with each other or with the ministry, and in which the latter followed more nearly the programme of its enemies than that of its

tax required for the franchise in the cities and rural communes was reduced to five florins, a change which favored the Slavs; and the class of great landowners was remodeled in Bohemia so as to give a larger share of power to the Czechs.

[1] For criticisms of Taafe's administration from a Czechish point of view, see the articles by Karel Kramar and Ladislas Pinkas, in the *Annales de l'Ecole Libre des Sciences Politiques* for 1889, 1891, and 1894.

friends, lasted about ten years. Then a change began to take place in the attitude of the parties. The Young Czechs, who condemned the fruitless submission of the Old Czechs, had gained in popularity and influence, and now held in the Bohemian diet more seats than their rivals. They complained that the electoral districts were so arranged as to give a grossly unfair advantage to the Germans; that under the existing system their province paid far more than her share of the taxes and received very little in return; that Francis Joseph was the first Emperor, since Joseph II., who had not been crowned King of Bohemia, and that in 1865 he had promised to perform the ceremony, but had never done so. Moreover, they were violently hostile to the foreign policy of the monarchy. The German Liberals, on the other hand, had gradually learned wisdom. At first, they had formed a united party to oppose the cabinet, but they had again broken up into groups, and the more moderate among them, seeing that they could not upset Taafe, were inclined to draw nearer to him to prevent his falling completely into the power of the other races. At this juncture, the Emperor determined to gather about his government all the moderate elements in the country, and rely on their support against the extreme factions. The settlement of the race problem in Bohemia was an essential part of the plan, and with that object the leaders of the Old Czechs and of the moderate German Liberals were invited to a conference at Vienna early in 1890. Here a compromise was agreed upon, whereby the provincial

The Bohemian compromise of 1890.

councils for agriculture and education were to be divided into German and Czechish sections; the districts for judicial and electoral purposes were to be readjusted, so that each of them should contain as far as possible only people of one race; and in the diet the representatives of each race were to have a limited veto on legislation. This scheme for the separation of the two races was designed to prevent the supremacy of either of them, and would have effectually blocked any attempt to create a Czechish kingdom of Bohemia.

The failure.

It was, therefore, fiercely attacked by the Young Czechs, who were so generally followed by the people of their own blood that even the Old Czechs did not venture to defend it, and, except for the division of council of education, the government was unable to carry it out.

Taafe's attempt to reorganize his majority.

The failure of the compromise induced the ministers to dissolve the Reichsrath in January, 1891, and appeal to all the moderate groups for support. The most important result of the elections was the almost total annihilation of the Old Czechs, who had been faithful to the government for eleven years. Their defeat destroyed, for a time at least, the power of the crown to manipulate the parties in the Reichsrath as it pleased; but, at the moment, Taafe had no difficulty in securing a majority, and in fact every considerable group, except that of the Young Czechs, was willing to support his cabinet provisionally. It was not long, however, before the German Liberals, who were more numerous than any other single group, became so dissatisfied that their

newly appointed representative in the cabinet resigned. After struggling for a couple of years to keep his jealous followers together, Taafe made a bold attempt to undermine permanently the strength of the Left by doing away with the property qualification for voting in the cities and rural communes. But the measure struck at too many political interests at once, and was opposed by the three largest groups in the Reichsrath. In fact, it aroused so much personal hostility to the Premier as to endanger the passage of the army bill, and the sanction of the state of siege, which strikes, riots, and race quarrels had forced the government to proclaim at Prague; and Count Taafe, who had seemed at one time nearly as permanent an institution as the monarchy itself, saw no course open but to resign.

His fall, Oct., 1893.

The new cabinet formed by Prince Windischgrätz in November, 1893, contained about half of the former ministers, the only important change being the grant of a portfolio to Dr. Plener, the leader of the German Liberals. It relied for support on a coalition between the Liberals, the Poles, and the Conservatives; and for more than a year it enjoyed a honeymoon, during which even race struggles appeared to subside. The question of electoral reform, however, proved a stumbling-block, as it had done for Taafe. Dissensions on this subject broke out between the Liberals and the Conservatives, and would no doubt have wrecked the ministry had not another matter anticipated that result. In June, 1895, the German Left became offended at

The cabinets of Windischgrätz, Kielmansegg, and Badeni.

a proposal of the government to teach Slowenian in grammar schools in Styria, and by formally withdrawing from the coalition forced the cabinet to resign. Windischgrätz was succeeded by Count Kielmansegg, who formed a ministry of affairs without any distinct party coloring, but remained in office less than four months, when he was replaced by Count Badeni, the Polish governor of Galicia. Badeni announced that he should stand above parties, and lead instead of being led; that his policy would comprise the appeasement and settlement of race antagonisms, but that the priority of the Germans would be respected. Before he had been long in power he took a step of a decidedly liberal character, by forbidding the reckless confiscation of newspapers for criticising the conduct of officials. The two great political questions, however, with which he was called upon to deal, were the renewal of the treaties with Hungary and the electoral reform. The first of these is not expected to present any insuperable obstacles, and in regard to the latter Badeni has been more successful than his predecessors, for he has prevailed upon the Reichsrath to create a fifth or general class of voters broad enough to include the workingmen.

Taafe's policy meant a postponement, not a solution.

The last three cabinets could hardly have been expected to make any great advance in the solution of the race question. Count Taafe, on the other hand, was appointed with a view of creating a better feeling among the different nationalities, but he achieved little or no permanent results of this kind, and at his fall the racial passions

seemed to be at least as violent and deep-seated as ever. Except for the unsuccessful attempt at a compromise in Bohemia, his policy during his long tenure of office really meant an indefinite prolongation of the *status quo* and a postponement of the final solution of the race question to a future day; but although this policy was conducted with consummate skill, it may be doubted whether in the end it will prove to have been a wise one.

Difficulties of the political problem in Austria.

The political problem in Austria is extremely difficult. Two methods of dealing with it can be imagined. One of them is the creation of a centralized government, in which the Germans, like the Magyars in Hungary, should play the part of the dominant race and force the rest of the people to adopt their language, their habits and traditions. Such a solution might, perhaps, have been possible at one time if the Germans had possessed the vigor and tenacity of the Magyars, if they had stood solidly together, and if they had been consistently supported by the crown. But an attempt to carry out this policy would probably be hopeless now, for owing to the influence of the priesthood which dislikes their rationalistic tendency, and to the readiness with which in Austria they lose their national characteristics as compared with the other races, the Germans have been steadily declining of late both in numbers and influence.[1] The other method of dealing with the problem is that of breaking up the Empire into a confederation based upon the different nationalities. But if this were seriously attempted it would be like trying

[1] Cf. Sidney Whitman, *The Realm of the Habsburgs*, p. 25 *et seq.*

to divide a cake among several children, one of whom wanted the whole of it, while another claimed a half, and three or four more were crying for a quarter apiece. There are other grave difficulties in the way. The position of Austria as a European power appears to demand a centralized government with an effective army; and for this reason it is said that the Emperor would prefer to rule with the aid of the Germans, who are opposed to provincial autonomy, if they did not make themselves obnoxious by insisting too much on having their own way. Moreover, the Magyars would object strongly to parceling political power in Austria among the races, both because they want the monarchy to remain a great power, and because the grant of national rights to the Slavs in Austria would provoke an agitation for similar privileges on the part of their kinsfolk in Hungary. Whether any middle course between these extremes can be successful, it is hard to say; but whatever policy is pursued, it is clear that no durable solution of the problem can be reached until the people have learned to regard it as permanent and legitimate. This sounds tautologous, but is really important.

Lack of a political consensus.

In the second chapter on France, the necessity of a consensus as the foundation of political life was discussed, and in each of the states so far considered we have found a certain number of irreconcilables who do not accept the consensus. In France, there are the Monarchists; in Italy, the Clericals; in Germany the Guelphs, the Alsatians, and perhaps we may add the Socialists. In all these

countries the people who repudiate the fundamental institutions of the land form a minority, and usually a small minority, of the nation; but in Austria it is hardly too much to say that everybody is irreconcilable. Almost the only people who really admit the legality of the existing constitution, or at least who do not want it radically changed, are the German Liberals, and almost all the time since Taafe came to power they have been heartily opposed to the government. The task of the ministers, therefore, has been hard. It has resembled that of an Esquimaux trying to drive a team of dogs, all of which want to break loose from the sledge, except the biggest and strongest, which pulls the wrong way. Austria will never be free from danger until a majority at least of her people have reached a consensus on the rights of the several races. Now, for the creation of a consensus two things are requisite, — an unbroken continuation of the same system of government for a considerable period, and a belief that it is permanent and final. But Austria has not had these things. During the first part of the period that has passed since the constitution was established, the Emperor vacillated between the centralizing views of the German Liberals and the nationalist policy of Count Hohenwart, so that at times the people hardly knew what to expect on the morrow. During the last half of this period, on the other hand, there have been few sudden changes of policy, but everything has been provisional and temporary, and apart from the dynasty it is hard to point to any institution that is generally expected to prove lasting.

It is not surprising, therefore, that the national question has not been set at rest, and that the various races retain their hopes and fears. This lack of a settled policy is the more surprising because the Emperor has shown a great fixity of purpose in his dealings with the other half of the monarchy. He made up his mind just how far he would yield to the demands of the Magyars, and he has never swerved from that determination.

Futility of any attempt to forecast her destiny.

Any attempt to foresee the destiny of Austria seems to be hopeless. The factors in the problem are so complicated, and the play of forces so intricate, that it is impossible to tell what a single decade may produce. The recent history of the country has been a bundle of contradictions. She has almost always been defeated on the field of battle, and yet she has gained more territory than she has lost. She is filled with explosives, and at one moment appeared to have been blown to pieces, but the fragments were reunited and have managed to stick together. Among her people socialism and its counterpart, anti-semitism, are perhaps more prevalent and more dangerous than anywhere else; yet her finances, which were in a deplorable condition, have become prosperous. Her fate in the future must depend a great deal upon the personal character of the Emperor, and the next coronation may bring a great deal of good or evil on the state. Of one thing we may feel sure. Apart from wars and social convulsions, upon which no calculation can be based, the hostility between the nationalities is not likely to abate at present, for throughout Europe

race feeling, or *chauvinism*, as it is called, is on the increase; and much as we may lament its excesses, we cannot shut our eyes to its influence. This spirit is a source of trouble in several countries, but in none of them does it throw forward such dark shadows as in the dominions of the House of Habsburg.

CHAPTER IX.

AUSTRIA-HUNGARY: HUNGARY.

The races in Hungary.

AUSTRIA is a conglomerate of territories united under a common sovereign at widely separated dates, some of the most important among them having been added in very recent times. Bohemia and Moravia, for example, were acquired by the House of Habsburg in 1526, while Galicia, Bukowina, and Dalmatia did not form a part of its dominions till the end of the eighteenth century. Under these circumstances it is not surprising that the Empire has failed to become consolidated, and that many of the provinces and races still retain their national habits and aspirations. Hungary, on the other hand, has had a very different history. The boundaries of the kingdom have changed very little for the last eight hundred years;[1] and hence one is astonished to find how much the various races have preserved their identity, how little they have become fused into a homogeneous people.

There are four leading races in Hungary, the Magyar, the Slav, the German, and the Roumanian.[2] The oldest of these is the Roumanian, which claims to

[1] Except, of course, for the temporary occupation by the Turks.

[2] By the census of Dec. 31, 1890, the numbers of the races in Hungary were as follows: Magyars, 7,426,730; Germans, 2,107,177; Roumanians, 2,591,905; Croats and Serbs, 2,604,260; other Slavs, etc., 2,565,285.

have sprung from the Roman colonists and the Romanized natives near the mouths of the Danube, and the members of the race certainly speak a language that has a close affinity with Latin. They live in the eastern part of the kingdom, and are especially numerous in Transylvania. By religion, they belong partly to the Orthodox Greek church, and partly to the so-called United Greek church, — a body formerly Orthodox Greek which has become united to the Roman church, but has retained the married clergy and the right to pronounce the liturgy in the vernacular.

The Roumanians.

The Slavs are, no doubt, the next most ancient race in Hungary, although the precise time of their migration into the country is obscure.[1] They are now broken up into two distinct branches, that of the Slowachians in the north; and that of the Croats and Serbs, who inhabit Croatia, in the southwest, and extend along the whole southern border of the kingdom. Croatia, indeed, whose population is almost wholly Slav, was never completely incorporated in Hungary, and although subject to the Hungarian king after 1102, kept its national institutions, and was governed by means of a ban or viceroy, and a separate diet of its own. The Slavs are divided into Catholics, and Orthodox and United Greeks.

The Slavs.

Croatia.

The Teutonic hordes that swept over Hungary at

[1] For a short account of the settlement of the different races in Hungary, as well as a history of the country, see Leger's *Histoire de l'Autriche-Hongrie*. For a more popular account, see the *Story of the Nations — Hungary*, by Professor Vamberg.

the time of the downfall of the Roman Empire of the west have left no permanent traces, and the Germans who live there to-day are descended from the more peaceful immigrants of later times. They are found in considerable numbers in the cities throughout the centre of the land from west to east, but nowhere do they form the bulk of the population, except in certain parts of Transylvania. Here at the end of the twelfth century a large colony of Saxons was established, who preserved their Teutonic culture, and were allowed to govern their cities after their own customs. They enjoyed also in their districts extensive administrative privileges, which were exercised by a body called the National University and an elected magistrate with the title of Saxon National Count. In fact, Transylvania occupied a position similar to that of Croatia, and maintained a large measure of autonomy until about thirty years ago. It had a diet composed exclusively of Saxons, Magyars, and Szeklers,[1] for the Roumanians, who formed the majority of the people, were entirely unrepresented.[2]

The Germans.

Transylvania.

The Magyars, who live chiefly in the vast plains that cover the centre and west of Hungary, although a decided minority of the whole people, are the most numerous and by far the most powerful of the races. They have ruled the country ever since their first invasion at the close of the ninth century, and in fact they regard it as peculiarly, and one

The Magyars.

[1] This race is closely allied to the Magyar.

[2] The Germans are partly Catholic and partly Protestant.

may almost say exclusively, their own. This people is of Turanian origin, but with their conversion to Christianity under Stephen, their first king (997–1038), they acquired the civilization of the west, and lost their Asiatic traditions. The fact that the Magyars are not Aryans has probably been one of the chief causes of their failure to assimilate the other races, but in some ways it has been a source of strength. It has prevented them from looking for support and sympathy, like the Germans and the Slavs, to their kindred in neighboring countries, and thus by making them self-dependent has increased their cohesion and intensified their patriotism.

The greater and lesser nobility.

Except in Croatia and Transylvania political rights were almost entirely confined to the nobles, who were supposed to be the descendants of the last race of conquerors, and were in fact Magyars. These men were divided into the greater nobility and the lesser nobility or gentry, and the two classes have played very different parts in the history of Hungary. The greater nobility were avaricious and tyrannous during the Middle Ages, and were constantly provoking resistance on the part of the gentry. At a later period, and particularly at the time of Maria Theresa, they were drawn under the influence of the court, became Germanized, and lost to some extent their sympathy with the aspirations of Hungary. The gentry, on the other hand, have always been thoroughly patriotic, and have been the chief force in creating and maintaining the national institutions of the country. To their efforts the present constitution is principally

due; and although the higher nobility has become of late years far more national in tone, and some of the leading statesmen have come from its ranks, the gentry is still the main directing power in politics. As yet the lower classes have taken very little part in public affairs, but this is not likely to continue to be the case, because large numbers of the gentry have ruined themselves by improvidence, ignorance of finance, and a passionate desire to spend money lavishly at elections.[1] The nobility have not belonged to a single party, but have often been divided on the great public issues; and hence Hungary has not suffered from the political seclusion of its upper classes, which has been the curse of so many European nations.[2] It may be added that the Magyars are about half Catholic and half Protestant.

The ancient Constitution of Hungary.

The Constitution of Hungary, like that of England, is not contained in any single document. It is embodied in a long series of statutes and diplomas of different dates, of which the oldest, and historically by far the most important, is the Golden Bull of Andreas II.[3] This venerable law was made in 1222, and was therefore nearly contemporary with Magna Charta, to which it bears a notable resemblance. The points, indeed, both of similarity and contrast between the histories of Eng-

The Golden Bull.

[1] Cf. "Der Adel in Ungarn," *Unsere Zeit*, 1886, vol. i. p. 21.

[2] Cf. Sidney Whitman, *The Realm of the Habsburgs*, p. 56 *et seq.*

[3] The most important of the others are: sundry coronation diplomas; the laws of 1790–91; the three laws of 1832–44 on the use of the Hungarian language; the thirty-one laws of 1847–48 as amended in 1867; and the laws of 1868 and 1873 on the relations with Croatia. Cf. Ulbrich, pp. 16–17, 136, *et seq.*; Gumplowicz, § 30.

land and Hungary are very striking, and would well repay a careful comparative study. The Golden Bull recites the privileges of the nobles, and provides a most extraordinary sanction for their enforcement. It declares that if the King violates any of the rights guaranteed, the nobles may jointly and severally resist and contradict him, — a provision which was appealed to as a justification for the insurrection of 1848, although it had long been omitted from the coronation oath, and had fallen into oblivion. Of course the actual use of such a right, without some tribunal empowered to decide whether the King had violated the law or not, would have meant a state of legalized anarchy; but the Golden Bull furnished another and more effective sanction. It decreed that the Parliament should be summoned to meet every year, and although this injunction was by no means literally carried out, and many years often elapsed between the sessions, yet the Parliament never became obsolete, and was always recognized as the great legislative council of the nation.

The Parliament and the county assemblies.

The ancient political organization of the country was very loose. The Parliament consisted of a Table of Magnates, composed of the bishops, high officials, and greater nobles; and a Table of Deputies, chosen by the congregations or assemblies of the counties, and by the free cities.[1] It possessed a general power of legislation, but the county assemblies had a right, by making representations to the government, to suspend the operation of any meas-

[1] These cities did not form a part of the counties, but elected their own independent councils and magistrates.

ure. Moreover, they elected and removed the administrative and judicial officers, and hence a law passed by the Parliament if unpopular in any county remained a dead letter there.[1] Such a system made political progress impossible; but, on the other hand, the congregations of the counties, which were in the habit of communicating with each other, kept the national spirit alive when the King refused to summon the Parliament, and hence were the means of preserving the liberties of the country. Under the older laws the political inequality was extreme. The nobles, many of whom had in time fallen to the condition of simple peasants, were exempt from all direct taxes, and yet the method of representation secured to them almost the sole enjoyment of political power. In the county, for example, all the nobles, in spite of their numbers, had a right to sit in the congregation, while the towns were represented only by deputies. The same jealousy of the cities, with their large German population, was shown in the organization of the Table of Deputies in the Parliament, where each of the counties, of which there were more than fifty, had a separate vote, but the free cities, although almost as numerous, had only a single vote between them. By this arrangement all men who were not noble, and hence not Magyars, were well nigh entirely excluded from any voice in the direction of public affairs.

[1] Cf. Paul Matter, "La Constitution Hongroise, 1848–60," *Ann. de l'Ecole Libre des Sci. Pol.*, 1889, p. 515; Laveleye, *Le Gouvernement dans la Démocratie*, liv. xii. ch. xiii. The *Foispan*, the nominal chief magistrate of the county, was appointed by the crown, but the power was really exercised by the elected *Alispan*.

In 1526 the Magyars, as the only chance of succor against the Turks, elected Ferdinand I., of Austria, King of Hungary, and from that time the crown remained in the House of Habsburg. The sovereigns of this line naturally found the special privileges of their various territories decidedly inconvenient, and no sooner had the danger from the Turks begun to subside than they tried to undermine the institutions of Hungary. The pretensions of the crown reached their greatest height under Joseph II. (1780–90), who despised everything mediæval, and opened his reign by refusing to be crowned King of Hungary or to take the customary oath. Joseph was an ardent reformer of the most advanced type, an exaggerated example of the eighteenth century radical. His aim was to destroy the remnants of feudalism, and to substitute therefor an enlightened, but autocratic, uniform, and centralized administrative system.[1] His theories were, however, premature, and were not less disliked for the good than for the evil that they contained. The Magyars were exasperated by his edict introducing equality of taxation, as well as by his abolition of the Parliament and the county assemblies; and finally the opposition to his policy became so universal and so violent, that just before his death he was compelled to revoke all his most important innovations. But although the plans of Joseph II. were abandoned, the friction with Hungary was not at an end. The Austrian government still continued to interfere with

The struggle with the Habsburgs.

[1] Alfred Michiels, *Histoire de la Politique Autrichienne depuis Marie Thérèse.*

the national institutions, while, by means of the censorship of the press, it tried to stifle the complaints of the Magyars. From 1815 to 1825 the Parliament was not summoned at all; and when at last it met, a change had begun in the character of the struggle with the crown. Joseph II. was a reformer, and the Magyars had hated all his reforms; but now a large and constantly increasing number of the Hungarians had become imbued with liberal ideas, and wanted political and social innovations, to which the Emperor, under the influence of Metternich, was decidedly averse.

The revolt of 1848.

The demand of the Magyars for a redress of grievances and for reform became louder and louder, and the relations of the King with each successive Parliament became more strained, until the year 1848, which filled Europe with convulsions, brought matters to a crisis. The Parliament passed thirty-one laws, improving its own organization, extending the suffrage, creating a responsible Hungarian cabinet, abolishing inequality of taxation and feudal privileges, and generally modernizing the institutions of the country.[1] A riot in Vienna had already caused a change of ministers, Italy was in open insurrection, and the Emperor Ferdinand, whose throne was tottering, felt constrained to sanction all these laws.

Unfortunately for Hungary the movement there was based upon two distinct sentiments, one an attachment to constitutional rights and a generous desire for liberal reforms, and the other the Magyar pride of race.

[1] At this time the place of meeting of the Parliament was changed from Presburg to Buda-Pesth.

The latter was shown in the treatment of the Croats and Roumanians.[1] In 1833 the Magyars had substituted their own tongue for Latin in the proceedings of the Parliament, and now they insisted that it should be taught in all the schools in Croatia, and should be used in all communications between that province and the Hungarian government. The Croats replied by demanding a large measure of independence, and when the Hungarians threatened to subdue them by force, Jelacic, the Ban of Croatia, crossed the Drave with an army on September 9. The Emperor, who had meanwhile been relieved by the suppression of the revolt in Italy, now took a different tone. He appointed Jelacic Governor of Hungary, and actual war began. But Ferdinand, who was surnamed the Good-natured, had not the character to deal with a crisis. Anxious to pacify his subjects, but lacking determination and perseverance, he had become weary of the struggle. Metternich, his minister, whose advice had been law for nearly forty years, had resigned at the outbreak of the storm, and at last, on December 2, 1848, Ferdinand, discouraged and perplexed, abdicated in favor of his youthful nephew, Francis Joseph, who wears the crown at the present day. The Magyars, however, were not in a mood to negotiate. The rapid march of events had thrust into the background Francis Deak and the moderate party of which he was the chief, and had thrown the control of the Parliament into the hands

[1] The Roumanians, who were exasperated by the laws about language, and by the incorporation of Transylvania, in which they had no voice, took an active part in the hostilities against the Magyars.

of Louis Kossuth, the leader of the extremists. The Hungarians refused to recognize the new Emperor, and in March, 1849, the latter, dissolving the constituent diet that had been assembled in Austria, decreed a constitution for the whole monarchy which ignored the laws of 1848. The Parliament at Pesth thereupon declared the entire independence of Hungary, conferring provisionally dictatorial power upon Kossuth. Reconciliation was now out of the question, and the fate of Hungary hung upon the sword. In spite of the quarrels between Kossuth and his generals, the fortune of war on the whole favored the Magyars, until the Emperor called in the Russians, with whose aid the Hungarian army was forced to capitulate at Vilagos on August 13, 1849. A month later the last of the insurgents under Klapka surrendered at Komorn. Had the different races in Hungary stood together, instead of helping to crush one another, the movements of 1848 might have had a very different result; but their mutual jealousy made all their efforts unavailing, and laid the country at the foot of the throne. Unfortunately the victory of the Austrians was followed by executions, which only served to enrage the Hungarians without demoralizing them.

Absolutism, 1849–60.

One of the Emperor's first acts after the restoration of peace was to set aside the constitution he had himself granted, and for ten years his power was absolute. He found it impossible, however, to break the spirit of the Magyars, or to destroy their belief in the rights of Hungary, — a belief which their jurists kept alive by teaching three principles: first,

that no change in the national institutions could be made without the consent of the Parliament; second, that the connection with the House of Habsburg rested on contract, and that the sovereigns of that House had violated the contract contained in the coronation oath; and third, that Francis Joseph was not the legal king of Hungary, because he had never been properly crowned. The government found that it was making no progress, and after the war with France in 1859, which ended with the defeat of Austria and the loss of half of her Italian dominions, it decided to give up severity and try conciliation. At this time there existed no imperial legislature of any kind, for the council that met at Vienna possessed only advisory powers, and was composed entirely of members appointed by the crown. A patent of March 5, 1860, now enlarged this body by the addition of members nominated by the diets throughout the monarchy. But these and other concessions failed to satisfy the Magyars. On October 30 the Emperor took a further step by issuing a diploma which increased the number of deputies from the diets, gave to the council real legislative power over finance, the post-office, and the army, and left all other matters to be regulated in Hungary in accordance with the former constitution of the kingdom. The Magyars were pleased, but the German party in Austria condemned the Diploma as a triumph of federalism. The ministers themselves were divided in regard to it, and some national demonstrations at Pesth sufficed to bring about a crisis and a change of policy.

The Patent of March 5, 1860.

The Diploma of Oct. 30, 1860.

Schmerling, a centralizer, was appointed the chief minister of state; and on February 26, 1861, a new patent changed the council into a real central parliament, and extended its competence to all matters not expressly reserved to the diets of the provinces. As this was a revocation of the rights granted four months earlier, the Hungarians protested, insisting that they would never send deputies to a central parliament, and demanding the constitution of 1848.

The patent of Feb. 26, 1861.

Four more years of struggle followed until the Emperor, who had ceased to be in accord with Schmerling, went alone to Pesth, and declared his wish to restore harmony with his people. The negotiations that followed were interrupted by the Austro-Prussian War of 1866, but were resumed after it was over, and finally concluded at an interview held on February 8, 1867, between the Emperor, Baron Beust, and Francis Deak. A responsible Hungarian ministry was then appointed, and on June 7, 1867, Francis Joseph was crowned King of Hungary with the ancient ceremonial. The Laws of 1848 went into effect at once without any statute or decree for the purpose, — the Magyars claiming that they had never ceased to be in force, — and with some modifications they remain the chief source of the public law to-day. Deak, to whom more than to any one else Hungary owes the restoration of her liberties, had now acquired a controlling influence in the politics of his country, and carried through the compromise against the opposition of the radical party and of the extremists who still followed the guidance of Kossuth. But

The compromise of 1867.

before considering the joint institutions which this compromise created, let us examine the internal government of Hungary.

The monarch, who bears in Hungary the title of King, presents to the Parliament before his coronation a diploma containing a promise to maintain the fundamental laws and liberties of the land; and this is published among the statutes, together with the coronation oath, which expressly confirms the privileges granted by the Golden Bull, except the right of insurrection. The King has the ordinary powers of a constitutional sovereign, but these are somewhat more carefully guarded than usual, on account of the anomalous position in which the country has stood so long.[1] No ordinance, appointment, or other royal act is valid unless countersigned by a responsible minister residing at Buda-Pesth; the provision about residence being explained by the fact that formerly the administration of the kingdom was mainly conducted by means of the Hungarian Chancery at Vienna. The Laws of 1848 substituted a cabinet at Buda-Pesth, and although a minister attending the person of the King was still retained, the feeling that he was liable at such a distance to be more or less out of touch with the people, and a good deal under the influence of the court, caused him to be deprived of the power to countersign royal acts. The requirement of a countersignature is no mere formality, for the cabinet is far less subject to the control of the crown than in Austria, and is in fact really responsible in the parlia-

The King.

[1] Ulbrich, pp. 149–53.

mentary sense of the term. The King, acting through the ministers, appoints all the officials of the state,[1] but he can appoint only citizens. He has the usual power to make ordinances for the completion of the laws, but police ordinances which affect the freedom or property of the citizen require the consent of the Parliament, as do all laws, and all treaties that relate to matters falling within the sphere of legislation. The King has power to summon, adjourn, and dissolve Parliament, and he must summon it every year. He has also an extensive authority over the Roman Catholic church, including the right to appoint the bishops;[2] but it must be remembered in this connection that the Roman Catholic church contains only about one half of the people of Hungary, the other half being divided between the Protestants and the adherents of the Orthodox Greek and United Greek churches.

The ministers.

At the head of the cabinet is the Minister President, who in practice selects his colleagues, and has a decided preëminence among them. They consist of the chiefs of the various departments established by law; of a minister in attendance at the royal court, whose office has become of small importance; and of a special minister for Croatia, whose functions will be referred to hereafter.[3] The ministers can be impeached; but wherever, as in Hungary, the lower

[1] This does not apply to the elective local offices, nor to the two custodians of the crown who are chosen by the Parliament but have no political functions. The Parliament formerly took part in the selection of the *Palatin*, but this office has not been filled of late years. Ulbrich, p. 150.

[2] Ulbrich, pp. 174–75.

[3] Ulbrich, pp. 154–56.

house has acquired the power to force the cabinet to resign, by a simple vote of want of confidence, the right of impeachment has no political value.

The Parliament (*Országgyüles*) is composed of two chambers, which bear the ancient names of the Table of Magnates (*Förendihár*) and the Table of Deputies (*Képviselöhár*). The Table of Magnates, as the name implies, is an aristocratic body. It consisted formerly of the high dignitaries of the Roman Catholic and United Greek churches; of certain court officials; of the *Foispans*, or chief magistrates of the counties; of three members chosen by the Diet of Croatia;[1] and of the whole titled nobility, that is, of all nobles who bore the title of prince, count, or baron.[2] The number of members of this last class was about eight hundred, but the proportion that attended was so ridiculously small that in 1886 the table was reformed.[3] No titled magnate is now allowed to sit unless he pays a land tax amounting to three thousand florins, or over twelve hundred dollars, and this has reduced the number of hereditary members to less than three hundred. At the same time, the great officers of the Protestant and the Orthodox Greek churches were given seats, and against violent opposition a provision was enacted empowering the King to appoint life members. Thirty of these were created at once, and more have since been added.

The Parliament.

The Table of Magnates.

[1] Some of the hereditary magnates are Croats by race.

[2] Ulbrich, p. 156.

[3] Paul Matter, "La Constitution Hongroise;" "Der Adel in Ungarn," *ubi supra;* Gumplowicz, § 87.

Unlike most of the upper chambers in Europe, the Table of Magnates is a native product, and was not copied from the English House of Lords. Before the reform of 1885, however, these two bodies bore a very remarkable resemblance to each other, but there is one important difference between them. The Hungarian magnates are not excluded like the British peers from the chamber in which the real work of government is carried on, and since 1848 they have frequently sought election to the Table of Deputies, renouncing for the time their hereditary seats in the other house. One would suppose that such an arrangement would draw the strongest men away from the Table of Magnates and leave it without force of will. But this has not proved to be the case, for within the last two years the table has made a very stubborn opposition to the anti-clerical measures of the government, although compelled in the end to give way. The fact is, that the hereditary magnates, who own among them one eighth of all the land in the kingdom, are a very powerful body of men, and by no means lack the courage of their convictions.[1]

The Table of Deputies.

The Table of Deputies[2] contains four hundred and fifty-three members, but of these forty are elected by the diet of Croatia, and take part only in matters that affect their province; for Croatia has a right to regulate a large class of subjects in her

[1] Dickinson (*Const. and Proc. of For. Parls.*, 2d ed. p. 296) says that the Table of Magnates never uses its right of initiative, and this is not surprising in a truly parliamentary government.

[2] Ulbrich, pp. 156–59, 178–79.

own diet, and is to that extent independent of the legislature at Buda-Pesth.[1] Hence there are, as it were, two parliaments, a smaller one which attends to all matters that relate to Hungary in the narrower sense of the name, and another, formed by the addition of the members from Croatia, which deals with the subjects that concern the whole kingdom.[2] The Table of Deputies for Hungary proper contains, therefore, four hundred and thirteen members, and these are elected on a limited suffrage. Except in the case of the learned professions, the franchise depends on the payment of a tax, which is not large, but whose size varies according to the nature of the property or income on which it is assessed, and is not the same in all parts of the country.[3]

Any voter is eligible who is twenty-four years old, can speak Magyar, and is not disqualified; and among

[1] Cf. p. 148, *infra*.

[2] The plan of an "in-and-out" parliament; that is, the device of leaving certain subjects to the local legislature, and reserving others, as matters common to the whole kingdom, to the Parliament, reinforced by representatives from the province who vote on these matters alone, derives an especial interest from the fact that it was adopted by Mr. Gladstone as the basis of his last Home Rule bill; and although this part of the measure was rejected by the House of Commons, it gave rise to some of the most valuable debates on the bill. The plan was also adopted by Baron Schmerling for the Austrian Reichsrath in 1861, but as the diets beyond the Leitha refused to send any representatives at all, the scheme never went into effect.

[3] In Transylvania the rural communes choose electors who take part in the choice of deputies. The usual continental habit prevails in Hungary of requiring a majority vote for election, and taking a second ballot if needed. Ulbrich, p. 157. As in Austria, the seats are distributed not solely on the basis of population, but also in accordance with economic and other considerations. Gumplowicz, p. 113.

the disqualifications is that of being an officer of a railroad subventioned by the government and still unfinished, — a provision due to the frequent scandals connected with the building of railroads both in Hungary and Austria. A story is told of Francis Deak which illustrates forcibly the corrupt state of railroad legislation.[1] Deak once remarked in Parliament that as a boy he had a strong fancy for eating eels, until he discovered the foul kind of place in which they lived, when his feeling turned to disgust. In like manner, he said, his enthusiasm for railroads was checked when he learned the methods by which concessions for building them were engineered through the Parliament. The honest old statesman never attended the debates on railroad bills thereafter; and if he chanced to enter the hall unawares when such a measure was under discussion, some of the members would cry, "Eels! Eels!" and he instantly slipped out again.

The Table of Deputies was formerly chosen for three years, but in 1886 the term was lengthened to five years, in order to lessen the frequency of elections, for the candidates being nominated at the polls, and the voting being public and oral, violence, and even bloodshed, is by no means uncommon.[2] A great deal of money, moreover, is spent on such occasions; no small part of it being used, it is said, for the direct bribery of voters.[3]

[1] Rogge, *Oesterreich seit der Katastrophe Hohenwart-Beust*, vol. i. p. 305.

[2] Sidney Whitman, *The Realm of the Habsburgs*, pp. 64–65.

[3] Cf. "Der Adel in Ungarn," *ubi supra*. The procedure in the Table

In regard to the local government of Hungary, it is only necessary for our purpose to point out certain tendencies, without entering into a detailed description of the mechanism.[1] The counties formerly elected all the local officials, and were almost completely independent of the central government. Even after 1867 they retained a large part of their autonomy, but they do not appear to have used it well, for the local administration seems to have been inefficient, and it is said that justice was venal. Tisza, the leader of the Liberal party, who had objected while in opposition to all plans for reforming the counties by extending the authority of the ministry, proposed, when he came to power, to remedy the evils of the existing system by creating an organization more like that of other continental nations. With this object statutes were enacted in 1876, which placed the local administration under the supervision of a committee composed in part of members elected by the congregations of the county, and in part of officers appointed by the crown.[2] The new machinery does not seem to have worked as

Local government.

of Deputies is based on that generally in use on the continent. Bills appear to be referred, as a rule, first to standing or special committees, elected by the table, and their reports can either be considered at once by the table, or referred to the sections. There are nine of these last, selected by lot, and each of them chooses one member of the central committee which makes the final report. Dickinson, pp. 354–57.

[1] Cf. Ulbrich, pp. 159–63; Gumplowicz, §§ 142–43; Paul Matter, "La Const. Hongroise," *ubi supra;* an anonymous article in *Unsere Zeit*, 1888, ii. p. 444, "Politik und Verwaltung in Oesterreich;" and another article in the same review, by Dr. Schwicker, 1891, ii. p. 450, "Die Verwaltungsreform in Ungarn."

[2] In Hungary, as in Prussia, the highest tax-payers are given a definite proportion of the representation in the local bodies.

well as had been hoped, and in 1891 a law was passed which reduced still further the autonomy of the counties, and set up a more thoroughly bureaucratic form of administration. Such a tendency is not, perhaps, to be regretted, for however firmly Anglo-Saxons may believe in the principle of local self-government, they must not allow any political creed to obscure the truth that in the art of government all principles are relative, not absolute, and that what is good for one country may be bad for another. It must not be forgotten that Hungary is in a peculiar position. The old county system made progress almost impossible, and yet the country was backward and needed intelligent and energetic administration. Moreover, a difficulty arose from the fact that the Magyars not only need some restraint themselves, but are engaged in an incessant struggle for supremacy with the other races in the kingdom.

The problem of race.

This brings us to a consideration of one of the most interesting problems in Hungarian public life, — that of the fusion of the different races, or rather of their absorption by the ruling nationality. The Magyars form less than one half of the population of Hungary, but they are more energetic, more aggressive, and better organized than the other races; and the restricted suffrage, the oral voting, and the arrangement of electoral districts tell so strongly in their favor, that except for the forty members from Croatia they hold all but about a score of the seats in Parliament. Moreover, they have long been the ruling caste, and have the habit of command. They feel that

Hungary belongs to them, and although since 1848 they have admitted men of other blood to a share of political power, they do not intend to let the control slip from their own hands. No line is drawn between the races in the sense of excluding any person from civil or political rights on account of his birth. The test of citizenship, the qualifications for the franchise, are the same for every one; and in fact the Magyars do not want to keep the other races distinct and in subjection: they propose to absorb them all, and make Hungary a homogeneous nation of Magyars. With this object they have insisted on proclaiming Magyar the national language. It must be exclusively used in Parliament, except by the members from Croatia, who are allowed to speak in their own tongue. It is the official language of the administration, the courts, and the university, and it must be taught in the public schools. The desire to stamp out all other languages was, indeed, carried so far, that at one time the municipal authorities at Pesth refused to extend the license of the German theatre.

The race problem in Hungary was complicated by the exceptional position of two provinces, — Transylvania and Croatia. Transylvania possessed peculiar institutions of its own, and enjoyed a considerable degree of independence until 1848 when it was united with Hungary. After the war was over, and the power of the Magyars had been broken, it regained its autonomy; but in 1867, when the new compact was made with Austria, it was again joined to Hungary, and by the laws of 1868 and 1876 it

Transylvania.

was completely incorporated in the kingdom, and deprived of its ancient privileges.[1] The diet was abolished, and the province was given seventy-five seats in the Hungarian Parliament, to whose authority it was absolutely subjected. The territory was cut up into new districts, the Hungarian administrative system was extended over it, and the laws on the use of the Magyar tongue were applied to it. The office of Saxon National Count was also abolished, and the National University was shorn of its power, and permitted to retain only the control of education. In short, the ancient institutions of Transylvania were destroyed, and it was made an integral part of the kingdom, and governed like the rest of the country. Of course there were loud and angry protests, but they were unavailing; for the Magyars were determined to crush the national spirit of the Germans, and of the still more numerous, though far less cultivated, Roumanians.

Croatia.

The other province, Croatia, was too strong, and its people were too homogeneous, to be treated in quite so high-handed a manner. Its power was shown in 1848–49, when its hostility was fatal to the liberties of Hungary. But although it had rendered an important service to the crown at that time, it had afterwards alienated the sympathies of the court by refusing to send deputies to the central Reichsrath, created by the Emperor for all his dominions in 1861; and when the compact was made between the two halves of the monarchy, it was abandoned to the tender

[1] Ulbrich, pp. 141–42.

mercies of the Magyars. In fact, to have dealt with it otherwise would not have been easy. Hungary insisted on the annexation, which was the more important to her because the country north of the Drave would hardly have been large enough alone to have enabled her to claim a right to equality with Austria. The Emperor, moreover, could not have recognized Croatia as a separate kingdom, and permitted her to elect a special delegation on imperial affairs, without conceding a similar privilege to Bohemia, and driving a fatal wedge into the western half of the monarchy. Croatia was, therefore, treated as a part of Hungary, and left to make the best terms she could with the government at Pesth. But the Magyars knew that they could not ride rough-shod over the Croats, as they did over the inhabitants of Transylvania, and they prepared to make concessions to the national sentiment. At first, it was not easy to effect a compromise, because most of the people in the province, under the lead of the celebrated Strossmayr, Bishop of Diakovar, were opposed to annexation in any form. In fact, the Croatian diet passed a resolution demanding a direct representation in the central organ of the dual monarchy. By dissolving the diet, however, and arbitrarily changing the election laws, the Hungarian cabinet obtained a favorable majority. An agreement about the government of Croatia was then made, and ratified by both legislatures.[1] Not unnaturally, the compact was unpopular with the Croats, and its details had to be subsequently

[1] For an account of these proceedings, see Rogge, *Von Világos bis zur Gegenwart*, vol. iii. pp. 31–33, 123–25, 142–43, 190–91.

modified in a sense favorable to them. In its final form it is as follows:[1] —

Its relation to Hungary.

Croatia is declared an inseparable part of Hungary, and there is only one coronation for the whole realm, with a single crown, although the words "King of Croatia, Sclavonia, and Dalmatia" still form a part of the royal title.[2] The subjects of the army, trade, and finance are reserved as matters common to the whole kingdom, everything else being left to the local Croatian authorities.[3]

The common matters are placed, so far as administration is concerned, in the hands of the Hungarian cabinet, which must always contain a minister specially designated to supervise the relations with Croatia. So far as they involve legislation they come within the competence of the Hungarian Parliament, reinforced, as has already been mentioned, by members elected by the Croatian diet.[4] The province was, however, given a

[1] The relations with Croatia are regulated by the laws of 1868, 1873, 1880, and 1881. See Ulbrich, pp. 177–84; Paul Matter, "La Constitution Hongroise," *ubi supra*.

[2] There was a great dispute about Fiume which, as the only seaport in the Hungarian half of the monarchy, has a peculiar importance. Finally an agreement was made whereby the town belongs provisionally to Hungary, and the rest of the coast line forms part of Croatia.

[3] This is, of course, a general statement. To be somewhat more precise, the rights reserved to Hungary cover legislation concerning trade, mining, citizenship, associations, and passports; and both legislation and administration in regard to treaties, the army, the post-offices, telegraphs, railroads, taxes, public loans, money, banks, insurance companies, patents, shipping, and kindred subjects.

[4] The deputies from Croatia in both tables are chosen for the term of the Hungarian Parliament, but in case the Croatian diet is dissolved they are elected afresh.

direct influence in the affairs of the dual monarchy, by a provision requiring that one of the members elected to the delegation[1] by the Table of Magnates and four of those elected by the Table of Deputies shall be Croatians. Here again the question of language became supremely important, and the Magyars made a concession which they denied to all the other races; for not only was Croatian declared the official language in Croatia, but the deputies from that province were allowed to speak in their native tongue both in the Hungarian Parliament and in the delegation, — a privilege all the more gratifying, no doubt, to the Croats from the fact that at this very time German was used in the committees of their own diet, because so few of the members could speak their national language.[2] It seems, indeed, hardly possible to exaggerate the absurd situations into which race sentiment has led the people of the monarchy.

Its organs of government.

It will be observed that a wide field is left to the local authorities in Croatia, including education, police, the administration of justice, and a large part of the ordinary civil and criminal law. The province has its own organs of government, the most important of which is the diet, or legislature. This body must be summoned every year, but can be adjourned or dissolved at pleasure by the King, and requires the royal sanction for the validity of its acts. In saying this, however, it must be remembered that

[1] For the organization and functions of this body see the following chapter.

[2] Rogge, *Oesterreich von Világos bis zur Gegenwart*, vol. iii. p. 326.

the powers of the King are really exercised by the Hungarian cabinet at Pesth. The diet consists of a single chamber, composed of the eight bishops; the Great Prior of Agram; the nine *Foispans*, or chief magistrates of the counties;[1] of thirty magnates; and of seventy-seven members elected for three years, on a limited and complicated franchise. At the head of the executive is the Ban, who is appointed by the King on the recommendation of the Hungarian premier. He countersigns all royal acts for Croatia, and is declared responsible therefor to the diet; but, in fact, this responsibility is illusory, for he is really the agent of the Hungarian ministers, appointed and removed as they think best, and responsible to them alone. The diet has, indeed, power to impeach the Ban, and any of his three chief secretaries; but this requires a two thirds vote, and the penalty is only removal from office.[2] Through the Ban the Hungarian cabinet has the disposition of a large patronage, which has been one of its chief means of controlling the politics of the province. The most curious provision in the compact is that which regulates the finances, for Croatia has no power to raise money even for the objects that are left within her own control. All taxes throughout the kingdom are voted by the Parliament of Hungary and collected by her minister of finance, forty-five per cent. of the net revenues from the province being then paid over

[1] The Foispans are appointed by the King on the recommendation of the Ban.

[2] If guilty of a crime, these officers can also be tried by the ordinary courts.

to it, and appropriated for the local expenses by the diet.[1]

Consistent policy of the Magyars towards other races.

Croatia is, then, an integral part of Hungary, but has retained a considerable amount of autonomy, and differs in this from every other part of the kingdom. Whether anything will prove to be permanent in the dominions of the House of Habsburg, it is impossible to foretell, but apart from the shock of a European war, there seems to be no reason why the compromise with Croatia should not be lasting. It is clearly intended to be so; for in this respect the course of Hungary in dealing with the race question has been exactly the reverse of that pursued by Austria. There have been none of the experiments, the changes of programme, the hand-to-mouth policy, the general uncertainty, that have characterized the government of the western half of the monarchy. The Magyars made up their minds what attitude they proposed to assume towards the other races, and they have maintained it through every change of ministry. Save in the case of the Croats, they have refused to allow any people or any district to enjoy special privileges, and they have tried to stamp out the national characteristics of the different races by insisting on a uniform administration, and, as far as possible, on the use of the Magyar tongue. Even in Croatia, where this policy could not be carried out, and where there

[1] This does not include the customs duties, which go to the dual monarchy, or the taxes on the consumption of meat and wine, which are left to the communes. Croatia also owns, and has a right to dispose of, certain religious and educational funds.

was no hope of changing the nature of the people, they enforced a limited subjection to the Hungarian government, and, except for some changes in detail, have preserved it unaltered. While, therefore, the Croats are in no sense Magyars, their province has a definite and settled relation to the kingdom.

The present aspect of the problem.

The fusion of the different races in Hungary, which might have been expected to proceed naturally and almost unconsciously during the Middle Ages, has been left as a difficult task for the present generation. The Magyars have undertaken that task with a stern determination to accomplish it. They have not tried to conciliate the other races, and it is perhaps too early to predict whether they will succeed in absorbing them by compulsion. The work is hard, and needs both time and persistence, but the first of these requisites will come of itself, and of the second the Magyars have no lack. The policy adopted has been harsh, and has produced a sense of oppression, which is one of the chief causes of the large emigration of Germans and Slavs; but the steadiness and firmness with which it has been pursued have begun to bear fruit. The agitation of the subordinate races appears, on the whole, to be lessening, and there are signs that they are becoming reconciled to their fate. The Magyars say of themselves that for centuries they have been a bulwark against the Turks, and now they are a bulwark against the Slavs. Their mission in this cause has begun at home, and so far it seems to have been successful.

The recent parliamentary history of Hungary differs

from that of every other country, on account of the peculiar relation of the cabinet to the parties in the representative chamber.[1] The compromise of 1867 with Austria was carried through the Parliament by the party of Deak, against the objections of a large body of men who did not want any connection between the two halves of the monarchy except that of a common sovereign. The latter were virtually irreconcilables, who could not be intrusted with power. Of necessity, therefore, the ministers were selected from among the followers of Deak; and as that statesman was unwilling to accept public office himself, Count Andrassy was intrusted with the formation of a cabinet. The majority in the Table of Deputies formed an association called the Deak Club, with which the ministers discussed and concerted the measures to be brought before Parliament; while the opposition consisted of the Extreme Left, composed chiefly of the Roumanians and Slavs, and of a much larger body known as the Left, which called itself liberal, but whose real characteristic was the intensity of its race feeling. On questions of race the Magyars of all parties habitually supported the government, but on other matters the Left voted almost invariably against it.

Recent political history of Hungary.

The rule of Deak's party.

The cabinet had a secure majority, and met no serious parliamentary difficulties so long as Andrassy remained

[1] Rogge, in his *Oesterreich von Világos bis zur Gegenwart*, and *Oesterreich seit der Katastrophe Hohenwart-Beust*, gives a good account of the political history through 1879. See, also, the *Austro-Hungarian Empire*, by Baron Henry de Worms, and *La Prusse et l'Autriche depuis Sadowa*, by Emile de Laveleye.

at its head; but in 1871 he resigned to accept the post of foreign minister of the joint monarchy, and Lonyay took his place. The new premier was hardly installed when charges of wholesale corruption were made against him, and by the time he had been in office a year, his followers made up their minds that they could no longer defend him. He resigned on December 1, 1872, and was succeeded by Szlávy. But the golden days of the party were fast drawing to an end. In 1873 Deak, the real soul of the majority, retired from Parliament, and in the same year occurred the great commercial crisis, which threw the finances of the state into confusion, and brought to light the reckless if not corrupt manner in which concessions for building railroads had been granted. These revelations injured the reputation of the cabinet so much that on March 1, 1874, Szlávy tendered his resignation. Another cabinet was formed under Bitto, which obtained the support of the old majority and of a fraction that had split off from the Left. The Deak party, however, was now going rapidly to pieces. The charges of corruption and excessive expenditure had demoralized and discredited it, and the country would have been exposed to great peril had not the Left withdrawn its opposition to the compact with Austria, — a step, indeed, without which the Emperor could hardly have appointed its leaders to offices in the cabinet.

The change of opinion on the part of the Left settled the future of Hungary, and removed all danger of another constitutional crisis; for it meant that the union with Austria was approved by all the Magyars,

except a few followers of Kossuth, who still clung obstinately to the revolutionary principles of 1848. Tisza, the leader of the Left, announced his party's change of base in February, 1875, and immediately the remnant of Deak's followers and all the more moderate members of the Left united to form a great Liberal party. A new cabinet representing this party was then appointed, and before the end of the year Tisza was placed at the head of the ministry, and for fifteen years he remained the real ruler of Hungary. His policy during his long tenure of office involved three cardinal points: the relations with Austria; the treatment of the subordinate races; and the question of local government. In his treatment of Austria he maintained loyally the compact of 1867, but when the commercial treaty made in that year expired, he strove to procure greater advantages for Hungary, and especially insisted that the Austrian National Bank should be converted into a joint institution for the benefit of both halves of the monarchy. To the subordinate races he was even more rigorous than his predecessors. In this matter, indeed, he carried out the principles which the old Left had always professed; but on the question of local government he changed completely the attitude he had taken when in opposition. Before 1875 the county congregations had been the strongholds of the Left, which had opposed every attempt to diminish their authority. The change of situation wrought, however, a change of heart, and after the Liberals came to power the administration was ruthlessly centralized.

The fusion with the Left.

The rule of Tisza.

Thanks to the permanent fusion of the old parties, Tisza was steadily supported by a large majority, and opposed only by the Extreme Right and the Extreme Left.[1] Moreover, the new administrative system furnished him with an abundant patronage, which he used with great effect in the interest of the party.[2] His tenure of office seemed to be secure for an indefinite time, and, in fact, the elections of 1887 brought him a larger majority than before; but, as is often the case, his popularity seems to have been worn out by the long duration of his power, and some remarks of a disparaging nature which he made about Kossuth gave rise to violent scenes in Parliament, and caused his resignation in March, 1890.

Tisza's successors.

His successor, Count Szapary, was one of his own colleagues; but although the same party remained in power, the course of politics turned in a new direction. The Extreme Left, or Radicals, whose members increased decidedly at the elections of 1892, succeeded in forcing the government to deal with the relations of church and state. The nobles and the clergy were certain to be hostile to the policy proposed, and Szapary, who as a magnate and a Catholic was not prepared to face such an opposition, withdrew from office towards the end of 1892. He was succeeded by Dr. Wekerle, the Minister of Finance, the other positions in the cabinet remaining unchanged.

[1] The Extreme Left was decidedly the larger body of the two, having at times as many as ninety members. It was more radical in the usual sense of the word than the Liberal party, but differed from it chiefly by a more intense Magyar feeling.

[2] Cf. Rogge, *passim*, and the anonymous article in *Unsere Zeit* for 1888, vol. ii. p. 444, "Politik und Verwaltung in Oesterreich."

Early in 1894 the first of the religious measures, a bill to establish compulsory civil marriage, was voted by the Table of Deputies, but was rejected by the Table of Magnates. It was immediately passed again in the deputies by a large majority, and Wekerle asked the King to create a sufficient number of magnates to insure its passage by the upper house. The request was refused, and the ministry resigned; but the events that followed showed how deeply the principle of parliamentary responsibility has become rooted in Hungary. An attempt to form another cabinet was frustrated by the attitude of Wekerle's followers, who made it evident that no ministry under a different chief could possibly command a majority of the lower house. In form the matter was compromised, but in substance the victory remained with the deputies and their minister. Wekerle withdrew his request for the creation of magnates, was reappointed to office, and stated in Parliament that His Majesty thought the bill must be enacted, and that the cabinet felt justified in hoping the magnates would also recognize the necessity, — a hope which enabled it to dispense with the creation of peers. Seeing that the King would not support them, the magnates gave way, and passed the bill by a small majority on June 22. The measures dealing with the religion of children born to parents of different faiths, and providing for the registration of births, deaths, and marriages by the officers of the state instead of by the clergy, were then passed by both tables, and all three laws received the royal assent on December 9. The triumph of the par-

The religious bills.

liamentary principle had been the more decisive, because Francis Joseph was believed to be personally averse to the policy of the government. But although Wekerle had won a great victory, he had done it at the expense of his own position. The religious bills had aroused a good deal of resentment, which was naturally directed against the head of the cabinet, and at the same time the ministers were blamed for not taking notice of seditious language used at meetings held in honor of the younger Kossuth. The Emperor was therefore of opinion that Dr. Wekerle had better retire, and this he did at the end of the year, a new cabinet being formed by Baron Banffy, who kept two of the former ministers. The new premier announced that he should continue the work of the late cabinet, and immediately brought in bills sanctioning the Jewish religion and establishing freedom of worship. These in turn were rejected or mutilated by the magnates, but after being voted again in the lower house by an overwhelming majority, were passed by the other table and received the royal assent.

Nature of parties in Hungary.

In looking at the recent political history of Hungary, one is struck by the singular fact that, since a responsible ministry was instituted twenty-eight years ago, no cabinet has ever fallen in consequence of a hostile vote in Parliament. Not that the ministers fail to recognize their responsibility to the popular chamber, but that no vote implying a lack of confidence in them, or a disapproval of their policy, has ever been passed. Nor have the ministers ever resigned on account of the unfavorable result of a general election. They have been forced to retire only

by the fact that their personal popularity was on the wane; and in spite of a system of committees and of interpellations that have weakened the authority of the cabinet in other countries, the Hungarian ministers have always succeeded in keeping a strong hold of the majority so long as they remained in office.

In seeking the explanation of this phenomenon, one is led to observe that there has never been a change of party in the ordinary sense; that is, one cabinet has never been replaced by another composed of the members of the former opposition. This is due to the fact that before 1875 the Left, on account of its refusal to accept the compact with Austria, could not be intrusted with the government, and since that date the Parliament has not been divided into two great hostile parties. Now the reason for the absence of a division into two parties must be found, as in the case of Italy, chiefly in the existence of a large body of men who play little or no part in the chambers, but are nevertheless the real political opposition. In Italy, this body consists of the Clericals; in Hungary, of the subordinate races; and in each case its presence tends to force the ruling class together, and prevent the normal development of parties. There is, indeed, a curious resemblance between the parliamentary history of Hungary, and that of Italy since the death of Cavour. In both countries the Right governed until its work was done and its popularity exhausted. But while in Italy the parties thereupon broke up into groups which formed coalitions of all sorts, in Hungary the Right and the Left united to form a single party

which acquired a permanent control of the government.

The lack of a division into two great parties, such as ordinarily prevails in England, will explain why the Hungarian cabinet is never upset by an opposition whose leaders are ready to form a new ministry; but it does not explain why the cabinet is not constantly overthrown, as in France and Italy, by a temporary coalition of groups, and replaced by another as feeble and ephemeral as itself. To account for this, we must revert to the fact already noticed that the majority in Hungary is not composed of a number of different groups, but of one solidly united party, which furnishes the government with a stable support. The existence of a single great party, which distinguishes Hungary from all the other countries we have considered, may be attributed to three causes: first, to the long political experience of the Magyars, acquired by local self-government, which makes them understand the value of strong political organizations and the necessity of concerted action; second, to the commanding personal influence of Deak and afterwards of Tisza; third, to their position in relation to the other races. The danger to Hungary from this source is far greater than that to which Italy is exposed at the hands of the Clericals. It is a question of national life and death: If by quarrels among themselves the Magyars should lose control of the state, they would run a terrible risk of being engulfed by the flood of Slavs by which they are surrounded. It is not surprising, therefore, that a majority of the deputies should combine to

support the government, and present an unbroken front to the Croats, the Serbs, and the Roumanians.

The Magyars have shown an extraordinary capacity for self-government, as is abundantly proved by the immense growth of material prosperity that has taken place since 1867. More especially they have shown a marked ability to reach and maintain an agreement on public questions. Such a statement may seem strange, in view of the intensity of party strife in Hungary, but it is nevertheless true. The compact with Austria, for example, was a new departure, and at first was strenuously opposed by a large fraction of the people, but after eight years it was almost universally accepted. The stability of the majority in Parliament is another result of the same quality. We have seen that in Austria the Irreconcilables are nearly, if not quite, as numerous and violent as ever, but in Hungary they are fast disappearing. Among the Magyars, very few of them are left, and even the Slavs seem more and more inclined to accept as permanent the existing institutions.

CHAPTER X.

AUSTRIA-HUNGARY: THE JOINT GOVERNMENT.

The constitutional treaties.

THE compact between the two halves of the monarchy, which had been agreed upon between the Emperor, Baron Beust, and Francis Deak, was ratified, or rather enacted, by the Hungarian Parliament in the form of a statute designated as Law XII. of 1867, and by the Austrian Reichsrath in the act of December 21 of the same year. These laws regulate the structure and functions of the joint government, but they do not form a constitution in the sense of a single authoritative document, for, although alike in substance, they are not identical in form. In fact, the Hungarian statute begins with a sort of declaration of the rights of Hungary, which has no counterpart in the Austrian act. The two principal statutes were supplemented by others. An Austrian act of December 24, and a corresponding Hungarian law (XV. of 1867), determined the quota to be paid by Hungary on account of the interest on the imperial debt. Another pair of statutes (Austria, December 24, 1867; Hungary, XIV. 1867) regulated for ten years Hungary's share of the common expenses, and still another (Austria, December 24, 1867; Hungary, XVI. 1867) established a tariff and trade union for the same period. These last two pairs of

laws expired, and were renewed in a more comprehensive form by means of a series of statutes which bear in Austria the date of June 27, 1878.[1] They were again renewed in 1887 in a slightly modified form, and negotiations for their extension for another period of ten years are pending at this moment. The constitution thus established, if it may be so called, can be amended only in the way in which it was originally made; that is, by concurrent action of the parliaments of Austria and Hungary, sanctioned by the Emperor.

The monarch.

The first connecting link between Austria and Hungary is the monarch himself, whose functions in the two countries are, however, carefully distinguished. He begins his reign with two separate coronations, — one at Vienna, where he takes an oath before the Reichsrath, the other at Buda-Pesth, where he is crowned with curious symbolic rites, full of oriental pomp. This dualism is carried out even in his title; for the Magyars are great sticklers about form in matters that involve a recognition of Hungary's equality with the rest of the monarchy. By an order of November 14, 1868, in place of the grandiloquent list of dignities in the old major title, medium title, and shorter title, he is to be styled simply "Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary;"[2] and he is to be referred to as *Seiner*

[1] Ulbrich, pp. 11–12. There are also a couple of subsidiary laws on the management of the debt. The Austrian laws relating to joint affairs may be found in Geller, Bd. I. pp. 12–73; and in the notes to the Act of Dec. 21, 1867, the differences that occur in the corresponding Hungarian statute are described.

[2] The right to bear the title of Apostolic King was conferred by Pope

Magestät der Kaiser und König, or, shorter still, as *Se. k. u. k. Apostolische Magestät.* Imperial *and* royal, for it seems that the *and* is extremely important. In the designation of the army, unlike that of the other institutions of the joint government, the particle was omitted; and in 1889 this aroused so much feeling among the Magyars that the Hungarian ministers threatened to resign if it were not inserted. The military officers objected, on the ground that the change would indicate a division of the troops into two separate armies, but the Emperor felt obliged to concede the point, and thus the *and* obtained at last its full rights in the Austro-Hungarian monarchy. Although the offices are kept distinct, the person of the monarch must always be the same. Hence the rules of succession are identical for the two countries, resting upon the House Laws, and especially on the Pragmatic Sanction, which has been ratified by both parliaments. Moreover the monarch, although free to abdicate entirely, is not at liberty to leave one throne and keep the other.[1]

The Emperor-King has the command of the joint army and navy; supervises the administration of matters common to both countries, and has power to make ordinances in regard to them.[2] He appoints for the direct control of these matters joint ministers for Foreign Affairs, for War, and for Finance, whose functions will be considered more at large under the head of their

Sylvester II. in 1000 upon Stephen of Hungary, the royal convert to Christianity.

[1] Ulbrich, pp. 17–20.

[2] *Id.*, p. 17.

respective departments.[1] Finally his consent is required for the validity of any act of the joint legislature.

The deliberative body of the dual monarchy is one of the most extraordinary political inventions of modern times. It consists of two delegations,[2] — one from Austria, the other from Hungary, — each composed of sixty members, of whom twenty are chosen by the upper and forty by the lower house of each parliament.[3] The delegations are reëlected annually, and must be summoned to meet by the Emperor at least once a year. In everything that relates to their sessions and procedure the most scrupulous regard is paid to the equality of the two countries. Their meetings, for example, are held alternately at Vienna and Buda-Pesth,[4] and the proposals of the government are laid before both bodies at the same time. In the Austrian delegation all the proceedings are in German; in the Hungarian, in Magyar;[5] while all communications between the two are made in both languages. It seems, indeed, to have been the object of the Hungarian statesmen, not only to maintain the equality of the two nations, but also to keep them apart, to avoid all appearance of a common parliament, for the delegations debate and vote separately except in a single case. If

The delegations.

[1] There is also a common Court of Accounts, Ulbrich, p. 20.

[2] Cf. the Austrian Law of Dec. 21, 1867, §§ 6–35; Ulbrich, pp. 20–22; Gumplowicz, §§ 104–7.

[3] One half as many substitutes are elected in the same way.

[4] This is not required by the Act of Dec. 21, 1867, which provides (§ 11) simply that the meetings shall be held where the crown appoints, or, as the Hungarian Law (§ 32) says, where His Majesty is residing.

[5] An exception is made in favor of the Croats, who are allowed to speak their own language. See p. 149, *supra*.

they disagree about any measure, and after the third exchange of communications an accord is not reached, either delegation may demand a common session. Here again the equality of the two countries is carefully preserved, for the two presidents take turns in presiding, the journal is kept in both languages, and, what is far more extraordinary, it is especially provided that the same number of delegates from each country shall take part, the side which has most members present being reduced by lot until the two are equal. In the joint session no debate is permitted, and the only business transacted is the taking of a vote on the matter about which the delegations have failed to agree. The procedure, therefore, is a peculiar one. The two bodies debate and vote separately, except in case of a deadlock, when they vote but never debate together.

The system favors Hungary.

The system appears to be so contrived as to insure to each half of the monarchy an equal influence, but in reality it gives an advantage to Hungary. This is due to the fact that the Magyars have made themselves the dominant people in Hungary, and have stamped out the opposition of the other races, while the Germans have not done so in Austria. The method by which the advantage is secured is as follows. In Hungary the delegates from each house are chosen by majority vote without any restriction, except that the Croats are entitled to one delegate from the upper house and four from the lower. Now the Magyars hold far more than half the seats in each house, and hence they are able to fill all but five of the places in the delegation with men who will main-

tain their interests and support each other. Moreover, the lower house was in the habit, for many years, of electing all its delegates from the same party. In Austria, on the other hand, it is provided by law that the delegates from the House of Representatives shall be chosen by the deputies from the several provinces in certain proportions;[1] and, as the provinces are controlled by different races and parties, the Austrian delegation is composed of a number of hostile groups. It has, in fact, happened more than once that the party which formed the majority in the lower house of the Reichsrath was actually a minority in the delegation.[2] The result is that the Hungarians act in concert far more than the Austrians, and it is often possible for the Magyars to persuade the Poles, or some other group, to vote on their side in the common session, and thus give them a majority. Common sessions are, no doubt, rare, but the mere knowledge of what the result of such a session would be is a powerful lever for forcing concessions.

The far greater solidity of the Hungarian delegation causes the ministers to rely upon it for support, and gives it in turn a greater influence over their policy. This state of things is the chief reason for the current saying that Hungary enjoys seventy per cent. of the power in the Empire for thirty per cent. of the cost. She certainly wields a much larger share of power than she could claim on the score of population

[1] Laws of Dec. 21, 1867 (R. G. B. 146), § 8, and April 2, 1873 (R. G. B. 40), Art. II.

[2] This was the case in 1872, 1876, and 1878, when in the delegation the peers and the opposition parties outvoted the Liberals, who supported the Austrian cabinet, but were opposed to the policy of the joint ministers.

or of wealth, as may be seen by the fact that during twenty-one out of the twenty-nine years that have elapsed since the union was formed the foreign affairs have been in the charge of a Magyar. A still more tangible proof of her influence was furnished during the current year, when a dissension between Baron Banffy, the Hungarian Premier, and Count Kalnoky, the Joint Minister for Foreign Affairs, arose out of the Papal Nuncio's public criticism of the religious policy of the Hungarian government. Although Kalnoky had managed the foreign relations of the monarchy with exceptional ability, and possessed the entire confidence of the Emperor, the influence of Banffy was strong enough to force him to resign.

The delegations have almost no legislative power.

It is important to observe that the delegations are practically confined in their action to voting supplies, and exerting a control over the administration. In fact, they can hardly be said to possess any real legislative power at all. The compact provides that their competence shall extend to all matters touching the common affairs;[1] but on inquiring what those are, we find the following list:[2] (1) Foreign relations of all kinds, but the ratification of treaties, so far as it is constitutionally required, is reserved to the two separate parliaments; (2) Military matters, except the regulation of the number of recruits, the liability to military service, and the civil rights and duties of soldiers; (3) The finances, so far as the common expenses are concerned, in short, appropriations; and fixing the conditions for raising, apply-

[1] Law of Dec. 21, 1867, § 13. [2] *Id.*, § 1.

ing, and paying loans, after the parliaments of Austria and Hungary have determined by parallel laws that a loan shall be raised.[1] Clearly there is very little room for legislation here. The compact then goes on to specify other matters which are not common, but are to be dealt with according to identical principles agreed upon from time to time. These are commercial affairs, and especially the tariff; legislation about those indirect taxes which affect industrial production; money and coinage; railroads which concern the interests of both halves of the monarchy; and the military system.[2] This second class of subjects, most of which in other federal governments fall within the province of the central legislature, are regulated in the dual monarchy by concurrent statutes of the two parliaments, and thus nearly everything in the nature of positive law must be enacted separately in Austria and Hungary. In substance, therefore, the whole joint legislation of the monarchy is a series of treaties, partly permanent and partly temporary, which cannot be changed or prolonged by any common legislature, but only by the contracting parties themselves. We have thus a unique case of almost absolute legislative decentralization, combined with a certain amount of administrative centralization, the laws on matters of common interest being enacted by the separate legislatures, and only their execution being intrusted to the organs of the federal government.

The work of the delegations consists, then, mainly in the control of the common administration, and in

[1] Law of Dec. 21, 1867, § 3. [2] *Id.*, § 2.

granting the annual appropriations. The control over the administration is exercised by examining the accounts, by acting on petitions, by discussing the reports of the joint ministers, and by addressing interpellations to them, for the ministers have a right to appear in the delegations, and are in fact constantly present. They can even be impeached by concurrent vote, but this has never been done. Now it is evident that, although the means of checking the policy of the government are not wanting, a strict ministerial responsibility cannot be enforced by bodies that meet only for a short time and debate separately. The joint ministers, therefore, are in a sort of general harmony with the delegations, but are under no such control as exists in a parliamentary form of government.

Their relation to the ministers.

We have seen that there are three joint ministries,—those for foreign affairs, for war, and for finance.[1] The Minister for Foreign Affairs is at the head of the diplomatic corps, and has entire charge of the foreign relations of the whole country, for the separate halves of the monarchy hold no direct communication with other nations. He consults frequently, however, with the premiers of Austria and Hungary, who, in turn, are often interpellated and make statements on the subject in their respective parliaments. He also gives to the delegations such information as he thinks best; but from the secret nature of diplomatic negotiation his reports are necessarily far more meagre than those of the other ministers.

The joint ministries.

Foreign affairs.

[1] The Minister for Foreign Affairs formerly bore the title of Imperial Chancellor, but the Magyars thought this savored too much of a consolidated state, and in 1871 it was changed.

The next department of the joint administration is that of war, and here again is found the strange mixture of federal union and international alliance that is characteristic of the relations of Austria and Hungary.[1] The regular army and the navy are institutions of the joint monarchy, although they are governed by separate standing laws of the two states, which are, of course, substantially identical. These laws determine, among other things, the number of the troops, and provide that the men shall be furnished by the two countries in proportion to population; but the contingent of recruits required from each country is voted annually by its own parliament. It is useless to inquire what would happen if either half of the Empire should refuse to raise its quota of troops, for there is no possible means of compulsion, and in this, as in most other cases, the smooth working of the joint government depends ultimately on a constant harmony between the cabinets of Vienna and Buda-Pesth. After the recruits are enlisted they are under the control and in the pay of the joint administration. The Emperor, as commander-in-chief, appoints the officers, and regulates the organization of the army. The minister of war, curiously enough, is not required to countersign acts of this nature,[2] but he is responsible for all other matters, such as the commissariat, equipment, and military schools.

War.

The regular army.

Besides the regular army, which belongs to the joint government, there are military bodies, called in Austria

[1] Cf. Ulbrich, pp. 23–25.

[2] Law of Dec. 21, 1867, § 5.

the *Landwehr*, and in Hungary the *Honveds*, which are special institutions of the separate halves of the monarchy. These troops are composed of the recruits that are not needed for the contingents to the regular army, and of the men who have already served their time in it. They form a sort of reserve, but cannot be ordered to march out of their own state without the permission of its parliament; except that in case of absolute necessity, when the parliament is not in session, the permission may be given by the cabinet of the country to which they belong. After such a permission has been granted, however, they are subject to the orders of the general commanding the regular army. The Landwehr and Honveds are organized under independent laws, which happen to be very much alike but are not necessarily so, and their ordinary expenses are borne entirely by the country to which they belong, only the increase of cost arising from their actual use in war being defrayed out of the joint treasury.

The Landwehr and Honveds.

The third department of the joint administration is that of the finances, which caused no little trouble when the compact was made in 1867. One of the most difficult questions was the share of interest on the debt to be paid by each country. The Hungarians insisted that they would not assume a burden that would embarrass them, and they had a great advantage in the negotiation, because they openly urged repudiation, to which the Austrians would not consent.[1] After a good

Finance.

The joint debt and common expenses.

[1] Rogge, *Oesterreich von Világos bis zur Gegenwart*, vol. iii. p. 42.

deal of discussion it was finally settled that Hungary should contribute twenty-nine and a half millions of florins a year towards the interest on the existing debt, and that Austria should pay the rest, enjoying, however, the benefit of any reorganization, or in other words repudiation, she might make, — a privilege of which she subsequently took advantage in the form of a tax on the national creditors. It was agreed that new debts should be contracted only with the consent of both parliaments, and that the interest thereon should be paid in proportion to the share of the common expenses borne by each country at the time the loans were made.[1] In regard to the current expenses of the joint monarchy, it was arranged that they should be defrayed as far as possible out of the joint revenue, and that any balance should be paid, seventy per cent. by Austria and thirty per cent. by Hungary, that being about the ratio of the sums then raised by taxation in the two countries. This arrangement about current expenses was made only for ten years. It has since been slightly modified; for a strip of land along the southern frontier of Hungary, which had been under the direct government of the imperial military authorities, was incorporated in that kingdom, and in consideration of the revenue they would receive from this territory the Hungarians agreed to pay an additional two per cent. of the net cost of the joint government. From the gross expenses of the dual monarchy, therefore, the revenues are first deducted; two per cent. of the balance is then paid by Hungary, and the rest is

[1] Law of Dec. 24, 1867 (R. G. B. 1868, No. 3).

assessed upon the two countries in the ratio of seventy and thirty per cent.[1]

The customs union.

Except for a few insignificant matters, such as the lease of state property, the sale of old material, and the profits of the powder monopoly, the only direct source of revenue belonging to the joint government is the customs tariff, which rests upon a treaty between the two countries made for ten years at a time, in the form of identical acts of the two parliaments.[2] These laws establish a uniform tariff for the whole monarchy, and provide that neither country shall lay any duty on goods coming from the other, except to the amount of its own excise on the same commodity. The duties, however, although paid into the common treasury, are not collected by the joint government, but by the separate countries, which have nothing to do with each other's custom-houses, except the right of mutual inspection.

The treaty goes beyond the mere subject of the joint revenue, and touches on other questions involving the economic condition of the people. It is provided, for example, that the monopoly on salt and tobacco, and the taxes on liquor, shall be regulated by parallel laws in the two halves of the monarchy. It is stipulated, moreover, that the citizens of the two countries shall have equal rights in all matters relating to trade; for the union between Austria and Hungary is so far from being a complete federation that the citizens of one country are strictly foreigners in the other.[3] The treat

[1] Law of June 27, 1878 (R. G. B. 61).

[2] Cf. Law of June 27, 1878 (R. G. B. 62); Ulbrich, pp. 22–23, 28–31.

[3] Cf. Ulbrich, p. 38.

also establishes a common standard of money, and provides that patents and trade-marks acquired in either country shall be protected in both ;[1] that commerce on the high seas shall be governed by uniform laws ; and that the regulations about posts and telegraphs, and about connecting railroads, shall be similar. All these matters, which lie at the very base of a common nationality, depend in the dual monarchy upon treaties, terminable by either party at the end of the ten years. The result is that one side has an opportunity to wring concessions from the other as the price of renewal, and in fact the Magyars did so in 1878, when they forced the Austrians to consent to the transformation of the Austrian National Bank into an Austro-Hungarian National Bank, and thereby obtained a bank in high credit without raising any money for the purpose.[2]

Bosnia and Herzegovina.

Curiously enough, there is a district which forms part neither of Austria nor of Hungary, but, like Alsace-Lorraine in Germany, is ruled directly by the federal officials.[3] The district did not belong to the monarchy when the compact of 1867 was made, but was acquired in 1878, after the Russo-Turkish war. At that time the Great Powers met at the Congress of Berlin, and agreed to protect Turkey against the grasping ambition of Russia by lopping off pieces of her territory for the benefit of one another. Austria's share of the booty consisted of

[1] Companies chartered in one country may open offices in the other. Law of June 27, 1878 (R. G. B. 63).

[2] The National Bank is governed by a pair of identical laws. Cf. Aust. Law of June 27, 1878 (R. G. B. 66).

[3] Ulbrich, pp. 27, 28.

Bosnia and Herzegovina, and, although these provinces remained under the nominal suzerainty of the Sublime Porte, the administration of them being alone confided to Austria, they were virtually annexed for all purposes to the dominions of the House of Habsburg. Now it would have been impracticable to divide the territory between Hungary and Austria, and neither half of the monarchy would have consented to its annexation as a whole by the other. Nor did the Germans or the Magyars want to imperil their supremacy at home by adding to the number of Slav deputies in their own parliaments. Hence the only possible course was to rule the provinces in common as a subject land. The two parliaments, therefore, passed laws providing that the administration of the provinces should be organized and carried on by the monarch and the joint ministers, reserving, however, to the cabinets of Hungary and Austria a right to an influence in the matter, that is, a right to be consulted in regard to it. The laws further provided that the cost should be defrayed as far as possible out of local revenues, and that any deficit should be covered by the delegations, but that the construction of railroads and other public works, and all measures which might affect the rest of the monarchy, should require the consent of the two parliaments. The immediate government of the provinces is intrusted to the joint Minister of Finance, although the connection with finance is not very evident. In fact, the matter was placed under the charge of that department, not on account of any natural fitness, but simply because the Minister of Finance, having no taxes to collect, is less busy than either of his colleagues.

If France has been a laboratory for political experiments, Austria-Hungary is a museum of political curiosities, but it contains nothing so extraordinary as the relation between Austria and Hungary themselves. The explanation of the strange connection is to be found in the fact that the two countries are not held together from within by any affection or loyalty to a common Fatherland, but are forced together by a pressure from outside which makes the union an international and military necessity. Austria, on the one hand, would not be large enough alone to be a really valuable ally to Germany and Italy; and if not an ally, she would be likely to become a prey, for she contains districts which they would be glad to absorb. Moreover, there would be imminent danger of some of her different races breaking into open revolt if the Emperor had not the Hungarian troops at his command. On the other hand, the Magyars without Austria would not be sufficiently strong to block the ambition of Russia, or resist the tide of panslavism. They would not only have little influence outside their own dominions, but they would run a grave risk of foreign interference in favor of the Slavs in Hungary. The union is, therefore, unavoidable, and it is very little closer than is absolutely necessary to carry out the purposes for which it exists. There is a common army, a common direction of foreign affairs, and a terminable customs union, which is, after all, the most convenient method of defraying part of the cost of the military establishment.

Character of the union.

In regard to the system adopted for accomplishing

this object, two points are especially noticeable. One is the privileged position of Hungary, which pays thirty-two per cent. of the expenses, and furnishes forty-one per cent. of the troops, but is given one half of the power by law, and practically enjoys even a larger share.[1] The other point is the clumsiness of the machinery, which requires for its working an infinite amount of tact and skill. There is no single authority that has power to settle anything, but every measure involves a negotiation between the two delegations or the two parliaments, and government becomes in consequence an endless series of compromises between legislative bodies belonging to different races which are jealous of each other. Moreover, the true source of power lies in the two parliaments, and to these the joint ministers have no access. It is in fact specially provided that they shall not be members of either cabinet. They are unable, therefore, to lead the parliaments; and that the parliaments cannot control them was clearly shown in 1878, when the annexation of Bosnia and Herzegovina was carried through against the wishes of both legislatures. The ministers of Austria are at least nominally responsible to the lower house of the Reichsrath, and those of Hungary are actually responsible to the Table of Deputies, but the joint ministers are not in fact directly responsible to any legislative body. One would naturally suppose that a mechanism so intricate and so unwieldy would be continually get-

[1] This is curiously at variance with the internal policy of the two countries, for in each of them the apportionment of representatives is based in part on taxation.

ting out of order, and in constant danger of breaking down. But political necessity is stronger than perfection of organization, and apart from some radical change in the western half of the monarchy, the forces that have made the dual system work smoothly in the past are likely to produce the same result in the future.

CHAPTER XI.

SWITZERLAND: INSTITUTIONS.

Races and religions in Switzerland.

THERE is a spot in Switzerland, famous as one of the most ancient passes over the Alps, where the great mountain chains from the west, southwest, east, and northeast, are gathered into a knot. It is the St. Gothard: and not far from the summit of the pass lies the Furka, where the traveler can stand and look down, on one side, on the little torrent of the Reuss, whose waters, pouring into the Rhine, find their way to the North Sea; and, on the other side, on the great glacier of the Rhone, from which springs the river of the same name that flows through southern France, and empties itself into the Mediterranean, near Marseilles. On the south of the Alps, the St. Gothard road winds along a stream that, falling into the Po, runs through the plains of Lombardy to the Adriatic, not far from Venice; and a few score of miles to the east rises the Inn, a tributary of the Danube, which has its outlet in the Black Sea. Now the races of men in their migrations are prone to follow the courses of the streams they meet. Hence the valley of the Rhone is inhabited chiefly by Frenchmen, while the Germans and the Italians occupy the headwaters of the Rhine and the Po; and it is a curious fact, although an accidental one, that along

the upper Inn a language is still spoken which has its nearest counterpart among the Roumanians at the mouth of the Danube.[1] Switzerland may, therefore, be considered the ethnological as well as the geographical centre of Europe, the place where the rivers take their rise and the races meet together.

Among these races the Germans preponderate heavily, counting, according to the last census, 2,083,097 members, against 634,613 French, 155,130 Italians, and 38,357 Romansh-speaking people. But a difference of blood is not the only thing that separates the Swiss from each other. They are also sharply divided on religious questions; for some parts of the country, and especially the mountain regions, did not feel the effect of the Reformation and remained Catholic, while other districts became strongly Protestant. Except in the case of the Italians, who are almost entirely Catholic, the lines of religion and of race by no means coincide, and in fact it is often impossible to understand the religious condition of a canton without a careful study of its history.[2] The Protestants form to-day about

[1] To be more accurate, the French occupy the cantons of Vaud, Geneva, and Neuchâtel, and parts of Freiburg, the Valais, and Berne. The Italians fill almost the whole of Ticino and parts of the Grisons. The Romansh-speaking people also live in the Grisons. All the rest of the country is German. It is worth noting that, except for the city of Basle, which forms a half canton by itself, the three purely French cantons have the greatest amount of wealth *per capita*, and the Italian canton of Ticino the least.

[2] The cantons of Lucerne, Uri, Schwyz, Unterwalden, Zug, Freiburg, Ticino, the Valais, Appenzell-Int., and Soleure are Catholic, all but the last nearly solidly so. Zurich, Berne, Schaffhausen, Appenzell-Ext., Vaud, and Neuchâtel are overwhelmingly, and Glarus, Basle, and Thurgau heavily, Protestant; while St. Gall, the Grisons, Aargau, and

three fifths of the total population, and indeed the relative proportion of the churches varies very little from generation to generation.[1]

The formation of the Confederation.

Now, if any one were asked what kind of government a free people so divided by blood and by creed would probably have, he would feel sure that it was not a highly centralized one. He would doubtless expect it to be a federation of some sort, and such is in fact the case. The development of Switzerland has been precisely the reverse of that of Austria. In the latter, the different races which were forced together under a single monarch have been straining apart, and striving to assert their independence; while the history of the Swiss has been that of separate communities uniting voluntarily for mutual protection, and learning to reconcile their discordant elements and draw closer and closer together.

The heart of the ancient Confederation consisted of the forest cantons at the head of the Lake of Lucerne. One by one, other members joined the league, some of them rural communities in the mountains, some of them cities in the lower country, and thus the Confederation gradually extended over the greater part of the present Swiss territory; but still no real federal union was formed, and Switzerland remained an alliance of separate states loosely bound together, until the end of the

Geneva are not very far from evenly divided. (In speaking of the cantons, I have used the names that seem most familiar to English readers.)

[1] By the census of 1850, there were 1,417,754 Protestants and 971,840 Catholics; by that of 1888, 1,716,548 Protestants and 1,183,828 Catholics.

last century, when the French Revolution swept over Europe like a tornado, uprooting everything in its track. Then the French Directory conferred upon the unwilling Swiss centralized institutions, resembling the last new pattern of perfect government that had been devised in France. The majority of the people did not appreciate a blessing which was unsuited to their habits and traditions, and in 1803 Napoleon tried to reconcile the hostile factions by the Act of Mediation. By this change, three new cantons were added to the territory;[1] as many more were carved out of the old ones;[2] and a federal system was established, in which the power of the central government was far from strong.

After the fall of Napoleon, the Congress of Vienna gave to the country its present configuration by adding three more cantons,[3] and at the same time the ancient political order was partially restored by still further weakening the federal tie. A period of reaction then set in; and, although after 1830 great changes began to take place in the cantonal governments, the form of the Confederation remained unaltered until religious dissensions led to the formation by the Catholic cantons of a separate league known as the *Sonderbund*. This caused a civil war, in which the Catholic forces were quickly overpowered and the Sonderbund broken up. The struggle precipitated a crisis, and brought about

[1] St. Gall, the Grisons, and Ticino. The first two of these had previously been *Zugewandte Orte*, or Affiliated States.

[2] Aargau, Thurgau, and Vaud.

[3] Neuchâtel, Geneva, and the Valais. These had all been previously affiliated to the Confederation, though not a part of it. Neuchâtel, however, remained to some extent connected with Prussia until 1857.

the creation of a stronger and more highly organized central government by means of the constitution of 1848. In 1874 the power of the federal authorities was again increased by another constitution, which has often been amended in part but has never been superseded, and still remains the basis of the Swiss federal system.

The relation of the cantons to the Confederation.

The Confederation is composed of twenty-two cantons, each with its own peculiar laws, customs, history, and habits of thought; or rather it would be more accurate to call the number twenty-five, for three of the cantons have, from religious, historical, or other causes, split up into half cantons, each of which is entirely independent of its twin, and differs from a whole canton only in two respects. In the first place, it sends a single member to the Council of States, or federal senate, instead of two; and, in the second place, it is entitled to cast only a half vote on the question of amending the constitution. The cantons correspond to our States, and in some respects the Swiss federal system is very similar to our own, although in others it is radically different.

The Swiss national government, like that of the United States, has only the powers specially conferred upon it, the constitution expressly declaring that the cantons are sovereign, so far as their sovereignty is not limited by that instrument, and as such are entitled to all the rights not delegated to the federal authorities.[1]

[1] Const. Art. 3. The cantons have power to make conventions among themselves on matters that are not of a political nature (Art. 7), and

The Swiss Confederation also resembles our own in being a union of states possessing equal rights, but the distribution of power between those states and the central government is based on quite a different plan from that which prevails here. On this point Switzerland is much more closely akin to Germany than to America; for, instead of assigning to the federal and state governments separate spheres of action, the Swiss, like the Germans, have combined legislative centralization with administrative decentralization, the federal laws being carried out as a rule by the cantonal authorities.[1] Except for foreign affairs, the custom-house, the postal and telegraph services, the alcohol monopoly, the polytechnic school, and the arsenals, the federal government has scarcely any direct executive functions, but acts in the way of inspection and supervision.[2] Even the army is mainly under the management of the cantons, the Confederation making the regulations, appointing the superior officers, and having the command in the field.[3] Moreover, the federal court has to rely for the most part on cantonal machinery to execute its judgments, as it has no officials of its own for the purpose.[4]

Small executive power of the federal government.

even to make treaties with foreign powers on certain minor subjects (Art. 9). For a list of these, see Vincent, *State and Federal Government of Switzerland*, p. 51.

[1] Cf. Dubs, *Droit Public de la Confed. Suisse*, pt. ii. pp. 44–45.

[2] Cf. Adams and Cunningham, *The Swiss Confederation*, ch. ii.; Dupriez, vol. ii. p. 234; Numa Droz, *Etudes et Portraits Politiques*, p. 392.

[3] Const. Arts. 13, 19–21; Adams, ch. xi.

[4] See Adams, p. 71 (the references to pages of Adams's work are to those of the translation, with notes, by Loumyer); Winchester, *The Swiss Republic*, p. 114.

On the other hand, the power of the national government to supervise the local administration is great, and extends beyond a mere oversight of the execution of the federal laws. Thus the Confederation is expressly directed to compel the cantons to provide free, compulsory, and non-sectarian education, although it has no right to prescribe how that education shall be given.[1] A wide opening for federal interference is furnished in the clause of the constitution whereby the Confederation guarantees to the cantons, among other things, the liberty and rights of the people and the constitutional rights of the citizens.[2] In form, the guarantee runs only in favor of the cantons as such; but in practice it has been held to authorize the protection of an individual against the cantonal authorities, and it has even been construed to empower the federal executive to prevent improper tampering with a local voting list.[3] Another article of the constitution, of great importance in this connection, is one which provides that if, in case of internal disturbance, the cantonal authorities are unable to call upon the federal government for aid, it may intervene of its own accord.[4] A few years ago an insurrection broke out in Ticino over a disputed election, and the cantonal authorities, though perfectly able to do so, refused to ask for help. Nevertheless the federal government felt authorized not only to interfere and suppress the tumults, but also to inquire into the

[1] Const. Art. 27.
[2] Art. 5. Cf. Art. 85, § 7.
[3] Cf. Adams, pp. 69–71; Winchester, pp. 129–130.
[4] Const. Art. 16.

validity of the election, and to take such steps as law and justice required.[1]

It will be observed, therefore, that the Confederation has very little direct executive power, but has a wide supervision over the administration, and in case of actual disturbance it appears as an arbiter with power to enforce its decisions.

Broad legislative power.

The legislative authority of the national government is much more extensive in Switzerland than in this country, for in addition to the powers conferred upon Congress it includes such subjects as the regulation of religious bodies and the exclusion of monastic orders,[2] the manufacture and sale of alcoholic liquors,[3] the prevention of epidemics and epizoötics,[4] the game laws,[5] the construction and operation of all railroads,[6] the regulation of labor in factories,[7] the compulsory insurance of workmen,[8] the collection of debts, and the whole range of commercial

[1] Cf. Salis, *Schweiz. Bundesrecht*, Bd. I. pp. 121–33; Vincent, pp. 36–37. On the occasion of the riots in Chicago in 1894, the United States government found means to interfere, but in accordance with the true principle of Anglo-Saxon development this surprising step toward centralization was accomplished through the instrumentality, not of the executive, but of the courts. The intervention of the Swiss national government, on the other hand, bears an obvious resemblance to the German system of federal execution.

[2] Cf. Const. Arts. 49–57.

[3] Art. 32, *bis*.

[4] Art. 69.

[5] Art. 25.

[6] Art. 26.

[7] And of the operation of emigration societies and insurance companies, Art. 34.

[8] Art. 34, *bis*.

law.[1] Beside all this, the central legislature is given power to interfere in other matters which are not directly subject to its control. The streams and forests, and the most important roads and bridges, for example, are placed under its supervision;[2] and the cantonal laws on the press, and on the right to acquire a settlement and vote on communal matters, must be submitted to it for approval.[3] In fact, as Dupriez remarks, the Confederation has been made a sort of tutor and supervisor of the cantons.[4]

In one direction the competence of the national legislature is more limited in Switzerland than in the United States, namely, in the matter of taxation, which is confined to customs duties levied at the frontier. The federal revenues are, in fact, derived entirely from income on national property; from the proceeds of the customs, of the posts and telegraphs, and of the powder monopoly; and from one half of the tax on exemptions from military duty.[5] If the expenditures are not covered by the receipts from these sources, there is a provision for defraying the balance by means of contribu-

[1] Art. 64. On some of these subjects the cantons cannot legislate at all; on others, action on their part is not excluded, provided it is not inconsistent with the federal statutes. The powers of the national government are not enumerated systematically in the constitution, but are scattered through the various articles of the first chapter.

[2] Arts. 24 and 37.

[3] Arts. 43, 55. This is also true of the cantonal constitutions. Art. 6.

[4] Dupriez, vol. ii. p. 175.

[5] Art. 42. The other half of this tax goes to the cantons, and the net revenue from taxes on alcohol is also paid to them. Art. 32, *bis*.

tions assessed upon the cantons, but as yet it has not been found necessary to resort to them.[1]

Powers of the federal government are increasing.

The legislative power of the central government is not only greater in Switzerland than in the United States, but it is being increased much more rapidly by means of amendments to the constitution, which are continually placing new subjects within the domain of federal law. While, therefore, both countries are centralizing to some extent, the process takes place in America by a stretching of the existing constitution, but in Switzerland it is carried on by the more comprehensive method of adding new clauses to the constitution itself. One reason for the rapid increase in the powers of the Swiss Confederation is to be found in the small size of the cantons, which are not big enough by themselves to provide for the needs of a modern state; for it must be remembered that the largest of them has only a little over half a million inhabitants, while the smallest has less than thirteen thousand, the average population being only about one hundred and twenty thousand. The cantons, moreover, realize how little they are much more keenly than they used to do, because, at the time the constitution of 1848 was adopted, several of the neighboring countries, such as Sardinia, Bavaria, and Baden, were small, but now those states have become parts of the great Italian and German monarchies, and this makes the Swiss cantons seem the more diminutive.

Another reason for the progress of centralization is

[1] Vincent, p. 75.

the comparative ease with which the constitution can be changed; for, although the process of amendment is not a little complicated, it is by no means so difficult to put in practice as in the United States, as is evident from the fact that of late an amendment of some sort has been adopted, on the average, every other year. The process can be carried on in a variety of ways.[1] In the first place a distinction is drawn between total revision, that is, the substitution of a new constitution for the old one, and partial revision, or the adoption of a specific amendment. If, at any time, both houses of the national legislature agree in wanting a revision of either kind, they can prepare the new constitution or the particular amendment, as the case may be, and, subject to a ratification by popular vote, they can pass it with the same formalities that are required for enacting an ordinary statute. But the change can also be brought about without the consent of the legislature, and in this case the procedure is not the same for both kinds of revision. A total revision may be demanded by one house alone if the other does not agree to it, or by any fifty thousand voters, and if demanded in either of these ways a popular vote must be taken on the question whether a revision ought to be made or not. If a majority of all the votes cast throughout Switzerland is in the affirmative, the legislature is elected afresh for the purpose of drawing up the new constitution.[2]

The methods of amending the constitution.

[1] Const. ch. iii., and Art. 85, § 14.

[2] In 1880 a solitary attempt was made by 50,000 voters to revise the constitution in this way, but the popular vote was in the negative.

Until 1891 a partial revision could be proposed only by both houses of the legislature, but in that year a change was made in the constitution so as to allow fifty thousand voters to demand a particular amendment. Here, again, there is another complication; for the petitioners can either present their amendment in its final shape, ready to be immediately submitted to popular vote, or they can describe it in general terms. In the latter case, the people must be asked whether they approve of the suggestion, and if they vote Yes, the amendment must be drawn up by the existing legislature. This right on the part of private citizens to propose a revision is called the initiative, and will be more fully explained in the next chapter, which treats of direct popular legislation; but it must be noticed here that every change in the constitution, whether a total revision or a partial amendment, and whether prepared by the legislature or by private initiative, has to be submitted in its final shape to popular vote, and does not take effect unless ratified by a majority both of the people and of the cantons, — the popular vote in each canton being taken for this purpose as the vote of the canton itself.[1]

The new initiative.

The men who framed the constitution of 1848 were deeply influenced by the example of the United States, especially in regard to the composition of the national legislature, or Federal

Organs of the federal government.

[1] It is a curious fact that the votes of the people and the cantons have been on opposite sides of a constitutional question only once. That was in the case of an amendment proposed in 1866 giving the Confederation power to regulate weights and measures.

Assembly as it is called (*Assemblée fédérale, Bundesversammlung*). This body consists of two branches, one of which, known as the National Council (*Conseil national, Nationalrath*), corresponds to our House of Representatives, and is elected directly by the people; while the other, called the Council of States (*Conseil des Etats, Ständerath*), and corresponding to our Senate, contains two members chosen by each canton, or one by each half canton. In the case of the executive, the American practice was not followed, for the Swiss have a dread of confiding authority to any single person, and always prefer a collegiate body.[1] Instead of a President, therefore, they instituted a Federal Council (*Conseil fédéral, Bundesrath*) of seven members. They also established a Federal Tribunal (*Tribunal fédéral, Bundesgericht*), which resembles, though not very closely, the Supreme Court of the United States.

Now, while the Swiss federal government bears a marked likeness to our own in many of its general outlines, in substance and actual working it is very different; for, as an observer has pointed out, it is strong where ours is weak, and weak where ours is strong.[2] If a foreign critic were asked what parts of our national government he considered the most successful, as compared with European systems, he would answer, without hesitation, the Senate and the Supreme Court; and he would add that the House of Representatives and the President were not quite as satisfactory. Of late years, indeed, the Senate has suffered severely from

[1] Cf. Dubs, pt. ii. p. 101; Dupriez, vol. ii. p. 182.

[2] *The Nation*, Oct. 15, 1891.

the admission of a number of small States, — rotten boroughs, as they have been aptly termed. We may fairly hope that the loss of reputation from this cause will not be permanent, and it is certain that in the past the Senate and the Supreme Court have excited among foreign writers and statesmen more admiration than the other branches of the government. Now, in Switzerland, precisely the reverse is true, for the Council of States and the Federal Tribunal are the weakest parts of the system, while the National Council, and still more the Federal Council, have worked extremely well; and it is a significant fact that the institutions in each country that have proved to be the best are those which are most thoroughly native and original.

The Federal Council.

The members of the Federal Council are all elected at the same time by each new Federal Assembly as soon as it meets. They are chosen for three years, or, speaking strictly, for the term of the National Council, because, if that body is dissolved before the three years have expired, the new Assembly elects the Federal Council afresh.[1] The work of administration is divided into seven departments, which are allotted to the members of the Council by arrangement among themselves.[2] Each councillor thus presides over a separate department, and, for the sake of convenience

[1] If a vacancy in the Federal Council occurs, it is filled only for the unexpired term. Const. Art. 96. For the organization and powers of the Federal Council, see Arts. 95–104.

[2] According to the ordinance of July 8, 1887, these departments are Foreign Affairs, Interior, Justice and Police, War, Finance, Industry and Agriculture, and the Post-office and Railroads. For the precise division of business between them, see Dupriez, vol. ii. pp. 239–46.

and greater efficiency, he usually retains the same one continuously.[1] The constitution declares that this distribution is made only to facilitate the dispatch of business, and that all decisions emanate from the Council as a whole; but in fact the members, who do the work both of political heads and chief under-secretaries of their departments, have not time to attend to current affairs outside of their special province; and hence their administration is supervised only by the President, who does as much in that way as he can, in addition to the particular business of his own department.[2]

The President.

This officer, whose title is "President of the Swiss Confederation," is one of the seven councillors, and is elected, as is also the Vice-President, by the Federal Assembly for a single year. The constitution expressly provides that the President shall not be elected President or Vice-President for the ensuing year; and by the present custom the Vice-President is always elected President, so that the office passes by rotation among the members of the Council.[3] The President is in no sense the chief of the administration. He has no more power than the other councillors, and is no more responsible than they are for the course of the government. He is simply the chairman of the execu-

[1] The allotment is nominally made afresh every year, and at one time there was a complaint that actual changes were too frequent (Dubs, pt. ii. pp. 101–2); but this is no longer the case (Dupriez, vol. ii. pp. 183–84), and in fact there are now complaints that changes are not made often enough (Droz, *Etudes*, p. 402).

[2] Dubs, pt. ii. p. 100; Droz, *Etudes*, pp. 402–4; Marsauche, *La Confédération Helvétique*, p. 24.

[3] Droz, *Etudes*, p. 266; Winchester, p. 100.

tive committee of the nation, and as such he tries to keep himself informed of what his colleagues are doing, and performs the ceremonial duties of titular head of the state. Until 1888 he was always intrusted with the conduct of the foreign relations, but as this involved an annual change in the management of a branch of public business which perhaps more than any other requires permanence, the practice was discontinued, and now the President takes charge of any one of the seven departments.[1]

Duties of the Federal Council.

The labors of the Federal Council are manifold, for besides the work of administration, it attends to a number of matters that are distinctly legislative or judicial. In Switzerland, indeed, the separation of powers, although proclaimed in many of the cantonal constitutions, is by no means carried out strictly; and the competence of the different branches of the national government is such that Dr. Dubs spoke of the system as an organic confusion of powers.[2] Owing to the distinction between public and private law which prevails in Switzerland, as in other countries of Continental Europe, the Federal Council has extensive judicial functions; for in spite of the fact that the Federal Tribunal was created chiefly for the purpose of deciding controversies about public law, a large class of administrative questions has been especially excepted from its

Its judicial powers.

[1] Adams, pp. 62–64; Dupriez, vol. ii. pp. 191–92; Droz, *Etudes*, pp. 398–405.

[2] Pt. ii. p. 104. It may be observed, however, that the Federal Council has no general power to issue ordinances to complete or carry out the laws. Dupriez, vol. ii. pp. 235–36.

jurisdiction, and since there are no administrative courts these questions are dealt with directly by the Federal Council, subject in most cases to an appeal to the Federal Assembly.[1] The result is that in deciding them the Council, not being a judicial body, has an eye to expediency and general considerations of policy as well as to purely legal principles, and hence exercises a good deal of discretion in the application of the law, sometimes taking a stand that appears decidedly arbitrary.[2]

One naturally asks why such a system is not a source of oppression; why the Council does not use its powers tyrannically. One reason is to be found, of course, in the traditions of a free people, and in the liberty, and widespread habit, of political association and discussion, which creates a healthy public opinion. Another is that the Council is not often called upon to pass judgment upon the acts of its own officials, but usually occupies the position of an arbitrator, because the federal laws are executed as a rule by the cantonal authorities.[3] The Council has, in fact, very little power that could be used tyrannically. The temptation to favoritism and injustice in other continental nations arises chiefly from the vast mass of functions accumulated in the hands of the Minister of the Interior; but these have almost no place in the Swiss federal machinery. Like the Governors of the States in America, the Coun-

[1] Const. Arts. 85, § 12; 102, § 2; 113. See p. 198, note 1, *infra*.

[2] See an interesting letter to *The Nation* of Oct. 15, 1891, on the case of the Salvation Army. Cf. Winchester, p. 91.

[3] Another reason lies in the fact that the Federal Council does not represent a party. See pp. 200–1, *infra*.

cil is saved from the danger of an abuse of power by the fact that the administration is mainly carried on by independent local authorities. Unlike the Governors, however, the Council is obliged to see that the local officials execute the law, a duty which necessarily involves a certain elasticity of interpretation. In order to be on good terms with the governments of the cantons and prevail on them to carry out the laws, it must exercise great tact and discretion, and must therefore be allowed some latitude in the application of the law. The Council performs this, as it does every other duty, admirably, and there is rarely any difficulty; but when trouble with a canton arises from any cause the method of compulsion is a little strange. The Council withholds the subsidies due to the canton, and sends troops into it, who accomplish their mission without bloodshed; for they do not pillage, burn, or kill, but are peaceably quartered there at the expense of the canton, and literally eat it into submission.[1] This is certainly a novel way of enforcing obedience to the law, but with the frugal Swiss it is very effective.

Relation of the Federal Council to the Federal Assembly.

The relation of the executive to the legislature in Switzerland differs from that of every other nation. The Federal Council is not like the President of the United States a separate branch of the government, which has a power of final decision within its own sphere of action. It has been given no veto upon laws to prevent encroachment upon its rights, and even in executive matters it has, strictly speaking, no independent authority at all, for it

[1] Adams, pp. 69–71; Winchester, pp. 90–91.

seems that its administrative acts can be supervised, controlled, or reversed by the Federal Assembly.[1] In practice this power is rarely used to set aside acts that have already been performed, but every year the Council presents an elaborate report,[2] and the chambers take advantage of the discussion that follows to recommend any changes in the method of administration.[3]

Contrast between its position and that of a parliamentary cabinet.

In some ways the position of the Council resembles that of the cabinet in a parliamentary government; for although the councillors are not suffered to be members of the Assembly, they appear in both chambers, take an active part in the debates, and exert a great influence on legislation.[4] Not only do they lay before the Assembly such measures as they think proper, but it is very common for the chambers, by means of a resolution called a "postulat," to request the Council to prepare a bill on some subject; and in fact all measures not introduced

[1] Adams, p. 53; Dubs, pt. ii. pp. 103–4; Dupriez, vol. ii. pp. 180–83, 199–203, 216–18, 227–33; Orelli, *Schweiz. Eidgenossenschaft* (Marquardsen), p. 37. The Assembly has even directed the revision of administrative regulations, and in such cases the Council has avoided a conflict of authority by yielding. Droz, *Instruction Civique*, p. 191. The control of administration by the Assembly must not be confused with the right of a person claiming to be injured in his rights to appeal to that body from a decision of the Council. The latter is not unlimited. Blumer, *Handbuch des Schweiz. Bundesstaatsrechts*, 2d ed. Bd. III. pp. 62–70; Salis, Bd. I. pp. 267–68.

[2] Const. Art. 102, § 16.

[3] Dupriez, vol. ii. pp. 228, 230–31.

[4] Cf. Const. Art. 101. "Still the relations between the Federal Council and the two houses come nearer to the English model than they do to the totally independent position of the American President and Congress." Freeman, quoted by Moses, *Federal Govt. of Switz.*, p. 138.

by the Council are, as a rule, referred to it before they are sent to a committee or taken up for debate.[1] But while the connection between the executive and the legislature is quite as close as it would be under a parliamentary system, the relations between the two are based upon an entirely different principle, because the federal councillors are not responsible in the parliamentary sense of the term, and do not resign when their measures are rejected. On the contrary, if the Assembly disagrees with them in legislative or executive matters, they submit to its will as the final authority, and try loyally to carry out its directions. It is in fact a general maxim of public life in Switzerland that an official gives his advice, but, like a lawyer or an architect, he does not feel obliged to throw up his position because his advice is not followed.[2] So true is this that since 1848, when the Federal Council was created, there have been only two cases of a resignation on political grounds, and it is noteworthy that only one of them was caused by a conflict with the legislature.[3] On the other occasion, the member who retired secured in the Assembly an approval of his policy, and resigned because it was afterwards rejected

[1] Dupriez, vol. ii. pp. 219–20. By a rule adopted by both chambers in June, 1877, all bills relating to civil law, after having been amended, must be referred to the Federal Council before they are finally voted upon.

[2] Professor Dicey uses this simile in a letter to *The Nation*, Dec. 16, 1886.

[3] Dr. Dubs resigned in 1872, when a constitutional revision of which he disapproved was voted by the Assembly. Dupriez says the Assembly refused to reëlect him (vol. ii. p. 186, note). But see Müller, *Pol. Geschichte der Gegenwart*, 1872, p. 303.

by the people at the referendum.[1] To the Swiss, indeed, it seems as irrational for the state to lose a valuable administrator on account of a difference of opinion about a law, as it is inconceivable to an Englishman that a minister can retain his place with self-respect after his measures have been condemned by Parliament.[2] If the position of the Council is unlike that of the cabinet in England, it differs still more from that of the cabinet in France. The defiant attitude habitually assumed towards the ministers there is replaced by a spirit of mutual confidence, and the forms of procedure are free from the contrivances designed to harass them and trip them up.[3]

The Council not a partisan body.

The Federal Council is essentially a business body, and in selecting candidates more attention is paid to executive capacity than to political leadership.[4] Its duty consists in conducting the administration and giving advice on legislation; but it is not expected to control the policy of the state, and herein lies the real secret of its position. Its members are not the leaders of a party, nor are they collectively pledged to any programme. In fact, they hold very divergent political views. The Council has

[1] This was in 1891, when M. Welti resigned in consequence of the rejection by the people of the purchase of railroad shares by the government.

[2] Cf. Droz, *Inst. Civ.*, p. 90.

[3] The rules of both chambers provide for interpellations (C. of S. Art. 60; Nat. C. Art. 68), but these are really simple questions, and in 1879 the Council of States decided that an interpellant might declare whether he was satisfied with the answer to his question, but that no debate could follow (*Réglement du Conseil des Etats*, ed. 1881, note to Art. 60).

[4] Droz, *Etudes*, p. 330.

habitually contained men from two out of the three chief groups, the Liberals and the Radicals, and of late the feeling that it ought to represent all classes of opinion has grown so strong as to lead in 1891 to the election of Dr. Zemp, a Clerical from Lucerne, — an event that has an especial importance when we consider that the Clerical is the most violent of all the parties in Switzerland, and is decidedly opposed to the general tendency of current politics. Serious doubts have been expressed whether the attempt to mingle such very different elements in a board can be successful;[1] but that it has proved satisfactory so far may be inferred from the fact that although Dr. Zemp was blamed by the Radical majority in the Assembly for not taking an active part on the question of revising the tariff, he was elected President of the Confederation in 1894 by a vote of nearly three to one.[2]

The members are not obliged to agree.

It is indeed surprising that a body so composed should work smoothly, and the explanation must be sought partly in the habit of compromise and submission to the majority; partly in the fact that the final decision of all the most important questions rests with the Assembly; and partly in the absence of any necessity for unanimity, such as exists in a parliamentary system. The councillors are not obliged to stand by each other, or even to pretend to hold the same opinions. None of them has a right, it is true, to propose any law in the Assembly without a vote of his colleagues, but it is often said that the

[1] Cf. Dupriez, vol. ii. pp. 190–91.

[2] *Bib. Univ.*, Jan., 1895, p. 214.

Council is very indulgent in authorizing its members to bring forward their favorite measures;[1] and it is certain that a councillor does not feel bound to support a bill because it has been introduced in accordance with such a vote. He is even at liberty to oppose it openly, and at times the members of the Council have argued against each other in the Assembly, when sharply divided on important questions of policy. This, however, is not very common, for the councillors exercise a good deal of prudence in urging their personal opinions.[2] Their situation in this respect is a little delicate. They are not required to hide their political views, and in fact they often take the stump actively when momentous issues come before the people at the referendum. But if, on the other hand, they were to carry their party principles too far, they would make it impossible for members of the various groups to sit together in the Council. Now it is clear that, with the peculiar organization of the Swiss federal system, a Council standing above parties is highly desirable. One of its most important functions is that of acting as a mediator between the different opinions, the different interests, and the different political bodies in the Confederation and the cantons, and this it could not do if it represented a single party. Its influence depends to a great extent on the confidence in its

[1] See, for example, the *Tribune de Genève*, June, 1890; *Bib. Univ.*, Jan., 1895, p. 216.

[2] Adams, p. 64, note by Loumyer; Dupriez, vol. ii. pp. 189–90, 221–22. Droz (*Etudes*, p. 384) remarks that, during the seventeen years he served in the Council, the members were very anxious to agree among themselves and stand as a unit before the chambers and the country.

impartiality, and hence its position is fortified by anything that tends to strengthen and perpetuate its non-partisan character.

Not only does the Council contain men from different parties, but the majority of the body does not always represent the dominant party in the chambers. From 1876 to 1883, four out of the seven members were Liberals and three were Radicals, although the Liberals had become heavily outnumbered by the other two parties in the Assembly, and the Radicals alone had obtained a clear majority in the National Council, and very nearly in both branches of the legislature sitting together. In short, the Council reflects the past rather than the existing party coloring of the Assembly. This result is due to the fact that the Council is virtually a permanent body, for, while it is chosen afresh every three years, the old members are always reëlected; and, indeed, since 1848, only two members who were willing to serve have failed of reëlection, one of whom lost his seat in 1854,[1] and the other in 1872,[2] at times when party passion still ran high. The permanence of tenure becomes astonishing when we consider that from 1848 to June, 1893, there had been only thirty-one federal councillors in all, of whom seven were still in office. The average pe-

Permanent tenure of the federal councillors.

[1] Ochsenbein, one of the leaders of the war against the Sonderbund, was thought by his former supporters to have become too conservative, and was defeated by Stämpfli. Henne-Am. Rhyn, *Geschichte des Schweizervolks*, vol. iii. p. 502, note.

[2] Challet-Venel. See Droz, *Etudes*, p. 359; Dupriez (vol. ii. p. 186, note) does not refer to Challet-Venel, but counts Dubs as a case of failure to reëlect, which would make three. Winchester (p. 95) also says two.

riod of service has, therefore, been over ten years; and in fact fifteen members have held the position for more than that length of time, four of them having served over twenty years, and one more than thirty years.[1]

Limited range of candidates.

When a councillor dies or resigns, the range of possible candidates for the place is quite limited. In practice, they are almost invariably selected among the members of the Federal Assembly, which is by no means a numerous body.[2] Moreover, by the constitution, the Council cannot contain two men from the same canton, and by tradition certain cantons are entitled to special consideration. At one time this was considered a grievance, and complaints were made about the so-called heptarchy of cantons that governed the Confederation.[3] At present, the system is not followed as rigorously as it was formerly, but still the privileges of the cantons are by no means entirely disregarded. Berne and Zurich, for example, have always been represented in the Council, and Vaud except from 1876 to 1881; while Aargau had a seat continuously until 1891.[4] An illustration of the narrow limits within which a choice is sometimes

[1] Droz, *Etudes*, p. 329, note. Since that time two of the members have died, so that there have now been thirty-three in all.

[2] *Id.*, p. 330; Dupriez, pp. 184–85; Marsauche, p. 23.

[3] Dubs, pt. ii. p. 98. These privileges are clearly a survival from the time when the scanty executive powers of the Confederation were exercised in rotation by the largest cantons under the title of *Vorort*.

[4] Droz, *Etudes*, p. 324. Except from 1876 to 1881, five of the Councillors have always been taken from the German and two from the Romance cantons, a distribution which agrees closely with the numerical proportions of the races. *Id.*, p. 383.

confined was given in 1879, when the councillor from Zurich died. Custom required that his successor should be a citizen of that canton, and at the same time an army officer was wanted to take charge of the war department. Colonel Hertenstein was the only member of the Federal Assembly who combined these two qualifications, and he was chosen, although his conservative opinions would probably have prevented his election under other circumstances.[1]

The councillors, who perform many of the duties of chief under-secretaries as well as those of heads of departments, are decidedly overworked, and at this moment plans are being discussed for relieving them of a part of their labors. Some of the suggestions made involve an entire reorganization of the Council, but as yet it is too early to guess what the outcome of the movement will be. M. Droz, who is one of the most eminent public men in Switzerland, and at the same time, perhaps, the most sagacious critic of her institutions, is of opinion that an increase in the functions of the subordinate officials, and a redistribution of business between the departments, is far preferable to any more radical change.[2]

The councillors are overworked.

The Federal Council has been considered at some length, because, although its legal authority is not extensive, it may almost be regarded as the mainspring, and is certainly the balance-wheel, of the national government. It has been called, by a leading Swiss statesman, the Executive

Advantage of the Swiss executive system.

[1] Droz, *Etudes*, pp. 258–59.

[2] *Etudes*, "La réorganization du Conseil fédéral."

Committee of the Federal Assembly, and in fact its position gives it some of the chief privileges of the English cabinet without the disadvantages. There is the same mutual confidence and intimate coöperation between the executive and the legislature, but there is also a possibility of including men of different opinions in the executive board of the nation; for this, which adds to the strength of the Federal Council, would be a source of weakness in a parliamentary cabinet. A coalition ministry is always weak, because it is composed of men who, under the pretense of harmony, are continually trying to get the better of each other, and would not hold together if any part of them alone could control a majority in Parliament. But as the Federal Council is not the organ of a majority in the Assembly, the representation of divergent views is frankly acknowledged. Instead of involving a state of smothered hostility, it arises from a real wish to give to openly different opinions a share of influence in the conduct of public affairs. Hence it strengthens the Council by broadening its basis, disarming the enmity of the only elements that could form a serious opposition, and enabling it to represent the whole community. Another advantage of the Swiss form of government consists in a stability, a freedom from sudden changes of policy, and a permanence of tenure on the part of capable administrators, which can never be attained under the parliamentary system. The habit of selecting new members singly and at considerable intervals secures, moreover, a continuity of traditions which is invaluable, while at the same time it lifts

the body above the transient impulses that stir the people.[1]

The removal of the executive beyond the reach of direct popular influence suggests another observation. There are two methods of treating public officers, one of which consists in holding them politically responsible for all their acts, the other in making them independent, and trusting to their own conscience for a faithful performance of duty. The first method is carried out by means of short periods of office, or a liability to removal at any time. Its objects are, to insure that the administration is always conducted in accordance with the wishes of the sovereign, and to prevent arbitrary conduct and the abuse of power from personal motives; its dangers, the absence of a far-sighted, consistent policy, and in a democracy a subservience to any cliques, rings, and bosses who may control the nominations or elections. The objects and dangers of the second method are the converse of these, and the means of securing the result is permanence of tenure. Each method has its advantages, and the art of government depends on a wise combination of the two. It is almost universally recognized, for example, that the judiciary ought to be independent, so that justice

[1] The proposal to have the Federal Council elected directly by the people, which has been discussed a great deal in Switzerland of late years, is considered hereafter in connection with its probable effect on political parties; but it is well to note here that, in view of the small amount of actual power vested in the Council, its great influence must be attributed to the fact that the Assembly selects for the place men in whom it has a strong personal confidence, and the same degree of confidence would hardly be felt for councillors chosen by the people.

may be administered without regard to persons or parties; but current opinion requires that all executive officers should be held to a strict political responsibility for their conduct. Now, in Switzerland, this last principle is in theory established, but is not carried out in practice, for although the Federal Councillors are elected only for three years at a time, their tenure is really permanent, and the certainty of reëlection relieves them from political pressure, and shields them from temptation. Thus custom, which is stronger than law, has developed a system in which the executive virtually enjoys a high degree of political independence, while the danger of abuse is obviated by the fact that the Assembly inspects the work of the Council, controls its general course of policy, and has power to reverse its acts.

The Council of States.

We now come to the Council of States, which contains two members from each canton and one from each half canton.[1] This body corresponds to the Senate of the United States, and was apparently expected by the framers of the constitution of 1848 to occupy a similar position; but this it has failed to do for several reasons.[2] Unlike the Senate, it is given no special functions, the powers of the two houses being exactly alike. The members, moreover, do not enjoy a fixed salary, a uniform method of election, or a long tenure of office; for the constitution,

[1] Cf. Const. Arts. 80–83.

[2] Orelli (p. 31) says it is not clear what position of the Council of States was intended to assume. In fact, it is something between the American Senate and a French upper chamber.

instead of regulating these matters, followed the tradition inherited from the ancient Diet, and left each canton to settle them as it saw fit. The result has been that the members are chosen in some cases by the legislature, in others by direct popular vote;[1] while the periods for which they are elected vary all the way from one year to four.

The history of the Council of States has in fact been almost the reverse of that of the American Senate. The latter was at first inferior to the other branch of Congress, both in influence and public esteem, but the second generation of statesmen discovered its advantages, and the presence of men like Webster, Calhoun, and Clay gave it a lustre that raised it above the House of Representatives. The Council of States, on the other hand, began its career with a high reputation. It contained at the outset most of the leaders in the movement of 1848; and of the seven members of the first Federal Council six were chosen from its ranks. At this time the periods of service were usually long, but owing to the lack of any special functions, and to the shortening of the terms, the position ceased after a few years to attract the leading statesmen, who came to prefer seats in the National Council.[2] Promising young men began to look on the Council of States as a stepping-stone to the other chamber, and in fact the members changed

Its influence has declined.

[1] The latter method of election is becoming more and more common. It exists now in ten cantons and six half cantons.

[2] Dubs, pt. ii. pp. 81–88; Dupriez, vol. ii. pp. 209–11. There are, however, some exceptions. See Adams, p. 55, Loumyer's note.

continually.[1] Now, of two bodies with equal powers, the one in which the political leaders are found is almost certain in the long run to carry the greater weight, and therefore it is not surprising that the Council of States enjoys less authority and influence than the National Council. It does not fill, however, a distinctly subordinate position like the upper chamber in countries with a parliamentary form of government. It is not a submissive body, and is not overriden by clamor; for it often disagrees with measures passed by the National Council, and not seldom has its own way or effects a compromise. Of late years the terms of service have increased in length, and there is a decided tendency to make them three years, like those in the National Council.[2] The members are also changed less frequently, and more care appears to be taken in their selection.[3] But the Council of States has not regained a position of equality, partly because the federal councillors are chosen as a rule from the National Council,[4] which has also the chief influence in guiding their policy; and partly because the Council of States, on account of the small number of its members, gets through its work more rapidly than the other house,

But its power is still considerable.

[1] Orelli, p. 30.

[2] At present the members are elected for one year in three cantons and one half canton, for two years in one canton, for three years in nine cantons and four half cantons, and for four years in three cantons, while in three cantons and one half canton the term is not fixed by the constitution.

[3] Blumer (2d ed.), vol. iii. ch. i. § 7.

[4] Winchester, p. 71.

and, often having nothing to do, has acquired an undeserved reputation for idleness.[1] When we reflect on the comparatively small influence of the Council of States, and remember that it is the successor of the ancient Diet, and represents the traditional rights of the cantons, we cannot help feeling how great a gap democracy has made in Switzerland between the past and the present.

The National Council.

The organization of the National Council is regulated entirely by the federal constitution.[2] The members are elected for three years by direct universal suffrage, every citizen who is twenty years of age being a voter, unless he has been deprived of his political rights in accordance with the laws of the canton where he resides. A voter is not eligible, however, unless he is a layman, — a restriction aimed exclusively at the Catholic clergy, because a Swiss Protestant pastor can resign his ministry while he sits in the legislature, but by the rules of the Catholic church a priest cannot divest himself of his sacerdotal character.[3] The method of election is regulated by federal statute, and the usual continental habit has been followed of requiring an absolute majority of the votes cast. This is true of both the first and second ballots, and it is only at the third trial that a plurality elects.[4]

The constitution leaves to the national legislature

[1] Dubs, pt. ii. pp. 83–84.

[2] Arts. 72–79.

[3] Adams, p. 44; Dubs, pt. ii. pp. 73–74; Marsauche, p. 15.

[4] Adams, p. 45.

the determination of the electoral districts and the number of members to be chosen therein, but provides that no district shall contain parts of different cantons, and that one member shall be allotted to each canton for every twenty thousand people, and any fraction left over which exceeds ten thousand. The result is that the National Council has increased with the growth of the population, until there are now one hundred and forty-seven members, divided among fifty-two separate districts, which vary in size, and elect from one to six members apiece.[1] The districts purport to be based on geographical, commercial, and political considerations, but the charge is often made that they are contrived with a view of preventing the Clerical party from getting a fair share of representatives by swamping Catholic minorities.[2] Alleged unfairness in districting is an old and standing grievance in Switzerland; and, indeed, deliberate gerrymandering is by no means an unknown trick both in the Confederation and the cantons.[3] In Ticino it gave rise in 1890 to an insurrection that might have had very grave results had not the federal government interfered. The districts for election to the National Council have been little changed since their first

The electoral districts.

[1] Cf. Electoral Law of June 20, 1890.

[2] The *Journal de Genève*, a Liberal organ, asserted on July 1, 1890, that the districts were contrived to secure the domination of a party, and caused the majority of the representatives to be elected by a minority of the people.

[3] Cf. Dubs, pt. ii. p. 71; Droz, *Etudes*, pp. 74–75; Deploige, *Le Referendum*, p. 83; Borgeaud, *Etablissement et Révision des Constitutions*, pp. 397–98.

arrangement,[1] but on the occasion of the last distribution of seats in 1889–90 a struggle took place over the question, and the Clericals, with the aid of the Liberals and a few Radicals, succeeded in dividing a Bernese district that included the Catholic Jura.[2] The change did not, however, remove all ground of complaint; and about the same time Mr. Ador, a Liberal from Geneva, made a motion in favor of proportional representation of minorities, which was killed by a proposal from the Radical side to couple with it a plan for unequal representation of the cantons in the Council of States.[3]

Sessions and debates.

The sessions of the Assembly are very short, the regular ones held in June and December lasting only about four weeks apiece, and the extra session, which almost always takes place in March, being shorter still.[4] In fact, the Assembly devotes itself strictly to the dispatch of business; and in this it is no doubt aided by the absence of stenographic reports, and the meagreness of the accounts of the proceedings in the newspapers, which relieve the members of any temptation to address the public at large instead of discussing among themselves. The debates are orderly in the extreme, although conducted in a curious polyglot; for there is no one official language in Switzerland,[5] and every speaker in the Assembly makes use of Ger-

[1] Cf. Orelli, pp. 29–30.

[2] Cf. *Bib. Univ.*, Jan., 1890, pp. 202–4; July, 1890, p. 208.

[3] Marsauche, pp. 268–80. On the subject of proportional representation, see page 232, *infra*.

[4] Dupriez, p. 206; Marsauche, pp. 15–16.

[5] Cf. Const. Art. 116; Orelli, pp. 44–45.

man, French, or Italian, according to his personal convenience, while all the formal proceedings are read both in German and French, — the few Italian members being supposed to be able to understand one or the other of those languages.[1] All this contrasts strongly with the state of things in Austria-Hungary, and one rejoices to find that men of different races can live together without making the confusion of tongues a source of oppression.

The joint sittings.

Before leaving the subject of the Federal Assembly, it is necessary to add that for all their ordinary work the two chambers sit separately, but that they meet in joint session for three purposes:[2] the decision of conflicts of jurisdiction between the federal authorities; the granting of pardons; and the election of the Federal Council, the Federal Tribunal, the Chancellor of the Confederation,[3] and the Commander-in-Chief of the federal army.

The Federal Tribunal.

The Federal Tribunal is the only national court. It is composed of fourteen judges, and as many substitutes, elected for six years by the Federal Assembly, which also designates the President and Vice-President of the court for two years at a time.[4]

[1] Winchester, pp. 78–79.

[2] Const. Art. 92.

[3] The Chancellor is the chief clerk both of the Federal Council and of the Federal Assembly (Const. Art. 105). During the period from 1815 to 1848, when he was the only permanent national official, he had a great deal of influence which has now disappeared. Dubs, pt. ii. pp. 95, 104–5.

[4] Before the Act of March 22, 1893, the number was nine. On the subject of the Federal Tribunal, see Const. Arts. 106–114; Dubs, pt. ii. pp. 105–147; Adams, ch. v.; Blumer, 2d ed. Bd. III. ch. iii.; Marsauche, liv. i. ch. vii.; Winchester, ch. v.

As a compensation to French Switzerland for the fact that Berne was made the seat of government, and that the national polytechnic school was located at Zurich, the Federal Tribunal was established at Lausanne, in the canton of Vaud. Here it carries on the main part of its work; but for criminal cases one section of the court sits in the five assize districts into which the country is divided for the purpose.

Its jurisdiction in civil and criminal cases.

In consequence of the existence of broad powers coupled with serious limitations, the jurisdiction of the Federal Tribunal has been in a state of no little confusion; and although an act was passed in 1893 which revised and enlarged its competence, its functions are still far from simple. On the criminal side it has jurisdiction of cases of high treason against the Confederation, and violence against the federal authorities; of crimes and misdemeanors against the law of nations; of political crimes and misdemeanors which are the cause or the result of disturbances that occasion armed federal intervention; and of offenses committed by officials appointed by a federal authority when such authority relegates them to the Tribunal.[1] It has also by statute jurisdiction of certain minor offenses, but fortunately its criminal procedure is rarely put in operation. Its competence in civil matters is much more extensive, and is used with far greater frequency. By the terms of the constitution it covers all suits between the Confederation and the cantons, or between the cantons themselves; suits

[1] The constitution provides that in these cases questions of fact shall be decided by a jury.

brought by an individual against the Confederation; and suits between a canton and an individual, if either party demands it.[1] The civil jurisdiction expressly conferred by the constitution has moreover been very much enlarged by virtue of a clause which authorizes the Confederation to place other matters within the competence of the court. The Assembly has, indeed, availed itself of this provision to make the Federal Tribunal virtually a general court of appeal from the cantonal tribunals in all cases arising under federal laws, where the amount in dispute exceeds three thousand francs.

Its jurisdiction in questions of public law.

In addition to its ordinary civil and criminal jurisdiction, whereby it administers justice between private individuals, or corporate bodies that appear before it in the character of individuals and litigate matters of private right, the court has important functions as an arbiter in questions of public law. In this respect Switzerland has followed the continental habit of regarding public law as something distinct from private law. The procedure is entirely different, and in a suit brought to test a matter of public law the court is confined to a decision of the question of right, and is specially forbidden to award damages.[2] Dr. Dubs, one of the most eminent of the Swiss jurists, and for many years a member of the court, considered the expounding of public law as

[1] In the last two classes of cases the amount involved must be 3,000 francs. This amount is fixed by statute. By the constitution the court has also jurisdiction of cases of citizenship and settlement, and of suits in which both parties voluntarily submit to its decisions.

[2] Act of June 27, 1874, Arts. 61, 62.

the chief duty of the Federal Tribunal, and the primary object of its existence. So strongly did he hold this view that he lamented the increase in civil jurisdiction, on the ground that it tended to obscure the real purpose and change the true nature of the court.[1] But his opinion has prevailed only in part, for the competence of the Tribunal has been extended with much greater liberality to private than to public matters. In the latter field it is given power by the constitution to decide conflicts of authority between the Confederation and the cantons; disputes between cantons on matters of public law; and complaints of the violation of the constitutional rights of citizens.[2] The last provision has been construed by statute to include rights guaranteed by a cantonal as well as by the federal constitution,[3] and in practice it has been applied with great freedom.[4] But in another direction the Assembly has shown itself decidedly jealous of the court. After describing the powers of the Federal Tribunal on questions of public law, the constitution declares that administrative controversies, as defined by statute, are reserved for the Federal Council and Federal Assembly; thus giving an opportunity to take away a large part of the jurisdiction conferred

Administrative law reserved for the Assembly.

[1] *Droit Public*, pt. ii. p. 144.

[2] Also complaints by individuals of the violation of concordats and treaties.

[3] Act of June 27, 1874, Art. 59 (a); Orelli, § 12, xii. The Federal Tribunal has more than once held a cantonal law invalid as contrary to the cantonal constitution. Droz, *Etudes*, p. 97.

[4] Winchester, p. 113.

upon the court by the preceding clauses.[1] In accordance with this provision the Assembly has excluded the Tribunal from the consideration of a long list of subjects, such as the right to carry on a trade, commercial treaties, consumption taxes, game laws, certificates of professional capacity, factory acts, bank-notes, weights and measures, primary public schools, sanitary police, and the validity of cantonal elections.[2]

The authority of the Federal Tribunal compared with that of the Supreme Court of the United States.

It will be observed that the Swiss Federal Tribunal is at a great disadvantage as compared with the Supreme Court of the United States, from the fact that it stands alone, instead of being at the head of a great national judicial system. A still more weighty disadvantage arises from an inferiority in the powers

[1] Const. Arts. 85, § 12, 113. What happens when one of these administrative questions arises incidentally in the course of a civil suit I have been unable to discover. The Act of Nov. 20, 1850, Art. 9 (Wolf's *Schweiz. Bandesgesetzgebung*), determining the competence of the federal and cantonal courts, provides that the court that has jurisdiction of the main question can decide subordinate ones that arise in the course of the suit. But this principle probably does not apply where a question of jurisdiction arises between the Federal Tribunal and the Assembly. A provision in the Act of June 25, 1880 (Art. 15), to the effect that in proceedings of a mixed nature, where a civil as well as a public question is involved, damages can be awarded as in civil cases, seems to show that the two classes of questions are regarded as distinct, even when presented in the same cause of action. It is probable that when an administrative matter which the court is incompetent to decide arises in a civil suit, the Federal Council can raise the question of jurisdiction in some such way as the prefect does in France.

[2] Dubs, pt. ii. pp. 130–33, and see pt. i. pp. 179–80. Until 1893 most of the questions relating to religious liberty and the rights of the different sects were also reserved for the Federal Assembly, but as they gave rise to passionate debates rather than to a judicial consideration of questions of law, it was finally agreed to transfer them to the Federal Tribunal.

granted to the Swiss tribunal in two respects; and these are especially important, because they not only explain its comparative lack of influence, but also throw light on the different degree of respect for law, or rather for the judicial interpretation of law, in Switzerland and America. In the first place, the relation of the Federal Tribunal to the legislature is unlike that of the Supreme Court, for it is bound by an express provision of the constitution to apply every law passed by the Federal Assembly.[1] It has, therefore, none of the peculiar authority vested in the Supreme Court of holding statutes unconstitutional, and none of the exalted dignity which that authority confers. Some of the Swiss jurists are inclined to regard the American principle as more rational, and regret that it does not prevail in their own country,[2] but there is no apparent likelihood of a change. In the second place, owing to the method of dealing with administrative matters, which has already been mentioned, the Federal Tribunal has less authority over the public officials than the Supreme Court. On this point, indeed, Swiss jurisprudence has adopted a middle course between the Anglo-Saxon practice, whereby the ordinary courts can pass judgment on the legality of all official acts, and the French system, which reserves all questions of administrative law for determination by the government or by a special tribunal created for the purpose.

[1] Const. Art. 113; and see pp. 217, note 3, *supra*, 229, note 3, *infra*.

[2] Cf. Dubs, pt. i. pp. 175–76; pt. ii. pp. 133–34. With a general referendum on all laws it would hardly be possible for the court to exercise such a power. Cf. p. 297, *infra*.

In Switzerland any citizen is at liberty to sue a federal official;[1] but, on the other hand, a number of important matters are withdrawn from the cognizance of the court. It may be added that although conflicts of jurisdiction between the Federal Tribunal and a cantonal authority are decided by the Federal Tribunal itself, conflicts between the latter and the Federal Council are decided by the Federal Assembly, so that the Tribunal has not power, like the Supreme Court, to pass upon the question of its own competence.[2]

The cantonal governments.

Cantonal feeling is slowly diminishing with the growth in the authority of the national government; but it is still so strong, and the powers of the cantons are still so extensive, that Swiss politics are only half understood without a knowledge of local institutions.[3]

[1] The person injured must first apply to the Federal Council and then to the Federal Assembly, and if both fail to send the case to the Federal Tribunal, he can proceed before that tribunal on his own responsibility after giving security for costs. If the complaint is against a member of the Federal Council or one of the federal judges, and the Federal Assembly rejects it, the suit is brought against the Confederation, which assumes the responsibility for its functionary. A similar principle is applied in the case of all officials in many of the cantons. Dubs, pt. i. pp. 194–98; pt. ii. pp. 367–69. It may be observed that hitherto there have been no administrative courts in Switzerland (Orelli, pp. 114–15), while questions of administrative law are withdrawn from the ordinary courts in every canton except Ticino. (Dubs, pt. i. p. 179; Const. of Ticino, Amend. of Nov. 20, 1875, Art. 9.) The new constitution of Berne adopted in 1893 (Art. 40) provides, however, for an administrative court.

An official can be prosecuted criminally for acts done in the course of his employment, only with the consent of the Federal Council or Federal Assembly. Act of Dec. 9, 1850, § 41; Wolf's *Schweiz. Bundesgesetzgebung*. Cf. Const. Art. 112, § 4.

[2] Const. Art. 85, § 13; Dubs, pt. ii. pp. 127–28.

[3] The facts stated in this and the following chapter in regard to can-

The cantons are obliged to ask of the Confederation a guarantee of their constitutions,[1] which must be granted if they contain nothing contrary to the federal constitution, assure the exercise of political rights according to republican forms, representative or democratic, have been ratified by the people, and can be amended whenever the majority of all the citizens demand it. With this limitation the cantons are free to construct their governments and alter them as they please, and the constitutions are in fact amended with great frequency, especially in German Switzerland.[2] In the four years from 1891 to 1895, for example, no less than twenty-three revisions took place, of which four were total revisions, that is, cases where a new constitution was substituted for the old one. Such a continual revision naturally involves the copying of one canton by another, and hence the process might be expected to result in making the constitutions all alike, so that a single type would prevail over the whole country. To some extent that is the case; but a number of the older cantons have preserved their traditions, and still retain their ancient forms of government.

The Constitutions.

By far the most picturesque of these is the *Landsgemeinde*, or mass meeting of all the citizens. This institution, which resembles closely the New England town-meeting, is a survival of the primi-

The Landsgemeinde.

tonal institutions are taken from the collection of cantonal constitutions published by the federal government in 1890, and the annual supplements thereto through 1895.

[1] Const. Art. 6. In practice this is applied to every amendment, as well as to the adoption of a new constitution.

[2] Cf. Orelli, p. 97.

tive Teutonic folk-mote, and still exists in two cantons and four half cantons.[1] The late Professor Freeman, who went into ecstasies over it, was the first man to bring it into general notice;[2] and since he wrote, a number of graphic and charming accounts of it have been published.[3] These usually describe the meeting in the canton of Uri, at the head of the Lake of Lucerne, partly because it is the most easily accessible, and partly because the open meadow near Altdorf where it is held, and the great mountains towering above, make the scene singularly impressive. On a Sunday morning in May the Landamman, or chief magistrate of the canton, accompanied by attendants dressed in the black and yellow livery of Uri, and bearing the huge horns of the wild bull, starts for the meadow, followed by all the people. When the procession reaches the spot, the Landamman takes his seat at a table in the centre of the field, while the men fill the space around him, and the women and children stand upon the rising ground beyond. The Landamman first recounts the events of the past year, and then offers a prayer; after which the business of the day begins. The measures to be proposed are brought forward, freely de-

[1] These are Uri, Glarus, the two Unterwaldens, and the two Appenzells. Until 1848 it existed also in Schwyz and Zug, but in the latter its power had long been small, and in Schwyz it had become exceedingly disorderly on account of quarrels between different parts of the canton. Eugène Rambert, "Les Alpes Suisses," *Etudes Historiques et Nationales*, ed. of 1889, pp. 235–61.

[2] *The Growth of the English Constitution*, ch. i.

[3] See, for example, Adams, pp. 130–32; Winchester, pp. 151–57; MacCrackan, *Teutonic Switzerland*, ch. xi. By far the best account of the Landsgemeinde and their history is that of Rambert.

bated and voted upon by the citizens, and finally the officers are elected for the ensuing year. Such in brief is the description of the Landsgemeinde as given by eye-witnesses, and in reading it one cannot fail to see how the people must be impressed with the dignity and responsibility of self-government, provided liberty does not degenerate into license, or influence over the masses into demagogy, — an evil that seems to have been happily escaped by these mountaineers. The form of the procedure is similar to that of the New England town-meeting, and must have the same value as a means of political education. In making this comparison, however, it must be remembered that the competence of the Assembly is far more extensive than in our towns; for it not only votes the taxes, and usually the loans and the more important expenditures, but it passes all the laws, and exercises the other powers that commonly belong to the legislature; and what is more, it has absolute power to change the constitution of the canton.[1]

The procedure.

In order to enable a large public meeting to get through its work, and to prevent surprise and hasty ill-considered action, it is necessary to prepare the business carefully beforehand, and in the case of the Landsgemeinde this is done by a council. At one time the councils tried to draw the whole control of affairs into their own hands, so that no question

[1] In Glarus when the assembled people decide to make a total revision of the constitution, the council prepares the new draft and submits it to the next regular Landsgemeinde; so that a revision of that kind cannot be carried through at one meeting. (Const. Glarus, Art. 88.)

could be brought before the Landsgemeinde without their approval;[1] but after a struggle the right of private initiative prevailed, and it is now the rule everywhere that one or more citizens can in some form propose any measure, provided notice is given to the cantonal authorities beforehand. A mass meeting of all the citizens is, of course, out of the question except in very small communities; and the larger the number of persons present, the less perfect must the procedure be. The Landsgemeinde, indeed, seems to have nearly reached the extreme limit of size, for in all but one of the cantons where it exists, the crowd is so great that it has been found impracticable to allow amendments to be offered on the spot, and thus the power of the assembled people is limited to acceptance or rejection of measures in their original form.[2] In one canton, moreover, the meeting is so large that even debate is no longer possible.[3] In this connection it may be worth while to observe as explaining in some measure the survival of the mass meeting as the legislative organ in a modern state, that most of the cantons where it still exists are extremely conservative in temperament, and their Landsgemeinde enacts very few laws.[4]

[1] Keller, *Volksinitiativrecht*, tit. i. ch. ii.; Rambert, pp. 199–205, 282–83; Deploige, pp. 8–9.

[2] It is strange that this one, Glarus, is the largest of those that still permit debate.

[3] This is Appenzell-Ausserrhoden, whose inhabitants numbered at the last census 54,109.

[4] Winchester, p. 160. This, however, is hardly true of Glarus and Appenzell-Ausserrhoden. Cf. Rambert, pp. 283–84, 304–5.

The council that prepares the business for the Landsgemeinde plays an important part in the government of the canton. Curiously enough it is composed of members elected, not by the Landsgemeinde itself, but by separate electoral districts. The *Landrath*, or *Kantonsrath*, as the body is usually called, is in fact a sort of subsidiary legislature. It attends to all the details that cannot well be brought before the people, passes ordinances, votes the smaller appropriations, examines the accounts, and elects the minor officials.[1] There is also an administrative council (*Regierungsrath* or *Standeskommission*) usually composed of seven members, and always elected directly by the Landsgemeinde. This is the executive body of the canton, and its chairman is the Landamman, who, as the official head of the state, also presides over the assembled people. His office brings with it little or no pay,[2] but it is one of great honor, and is usually held by a member of an old and wealthy family; for it is a singular fact that the aristocracy in many of the mountainous districts have maintained their hold upon the people, whereas the patricians who ruled in Berne and some of the other cities aroused such bitter enmity, that after 1848 they were driven from power, and have ever since held aloof from politics. It is not, indeed, uncommon to find a Landamman the members of whose family have held the office several times before. A story is told of a man over whose

The other organs of government in the Landsgemeinde cantons.

[1] In some of the cantons the executive council forms, *ex officio*, a part of this body; in others it does not.

[2] Winchester, p. 157.

mantelpiece hung three swords; one of them his own, another his father's, and the third his grandfather's, all worn when the owners were presiding over the Landsgemeinde of the canton; and this in the purest democracy in the world.[1]

The government of the other cantons.

If we now turn to the cantons that have no Landsgemeinde, we shall find that all their governments are constructed upon one general type. Each of them has a single legislative chamber, usually known as the Great Council, which is

The Great Council.

elected by universal suffrage, and in all but a couple of cantons is chosen for either three or four years.[2] It passes the laws, votes the taxes and appropriations, supervises the administration, and appoints a number of the more important officials.

The Executive Council.

There is also a smaller executive council elected for the same term.[3] This was formerly a numerous body, but of late years it has been universally remodeled upon the pattern of the Federal Council, and is now composed of five or seven members in every canton except Berne, where it contains nine. Its

[1] Andrew D. White, *Am. Hist. Assoc. Papers*, vol. iii. no. i. p. 163. In a memoir (*Etudes*, p. 143), M. Droz describes how the Landamman Heer, who was a member of one of the rich old families in Glarus, was deliberately educated with a view to political life, and how naturally his fellow-citizens took it for granted that he would hold public office as soon as he was old enough to do so.

[2] It is sometimes called the *Kantonsrath* or *Landrath*. In Freiburg it is chosen for five, and in the Grisons for two years.

[3] Except in the Grisons, where, by the constitution of 1892, its term is three years. This body is called in the French cantons the *Conseil d'Etat*; in the Grisons the *Kleine Rath*; and in the other German cantons the *Regierungsrath*.

work, moreover, is now divided in like manner into separate departments, over each of which a councillor presides.[1]

Relations between the two.

The relation of the executive to the legislature is very much the same in the cantons as in the Confederation, for although the great councils do not seem to have the absolute power to reconsider and reverse administrative acts that is possessed by the National Assembly,[2] yet in consequence of their habit of debating the annual report of the executive council and voting recommendations in the form of *postulats* thereon, they have tended to draw the real direction and control of the administration into their own hands.[3] On the other hand, the executive council, like the Federal Council, supplies the chief impulse to the legislative body. Its members have the same habit of making reports and proposing measures; of appearing and taking part freely in debate; and they follow the same practice of submitting to its decisions, and of retaining their places, although it does not support their plans. In fact they are usually re-elected without regard to any differences of opinion that may have occurred, in accordance with the Swiss principle that good men ought to be continued in office, even if their views do not in all respects coincide with those of their constituents. It is the general custom,

[1] Orelli, p. 109; Droz, *Etudes*, p. 386.

[2] Cf. Dubs, pt. i. pp. 173–74; pt. ii. p. 103. The constitutions do not clearly define the spheres of action of the executive and the legislature, but often mention among the powers of the great council that of supervising the administration.

[3] Orelli, p. 99.

moreover, to give the minority a part of the seats, and in the cantons of Berne and Aargau this is especially enjoined by the constitution. The principle that the executive councillors ought not to be selected exclusively from one party has, indeed, become so well established that there are now only two cantons in which the minority is not represented.[1] In short, the executive council, like the Federal Council, is not intended to be a partisan body, but rather a business committee, whose duty consists in advising the legislature, and carrying on the work of administration.

Method of choosing the executive council.

The most important difference between the cantonal governments consists in the method of choosing this body. Formerly the election was made in most cases by the great council, but with the spread of democratic theories the practice of direct election by the people has been steadily gaining ground, and will probably continue to do so.[2] Eleven cantons have now adopted this system, leaving only eight where the choice is made by the great council, and it may be observed that of those eight two are entirely and three others partly French.[3] The effects that were predicted from the election of the executive

[1] The exceptions are Neuchâtel and Freiburg. *Bib. Univ.*, June, 1893, p. 655. It is worth while to notice that Neuchâtel is one of the cantons that have adopted proportional representation for the great council. See p. 232, *infra*.

[2] When the executive council is elected by the people, the canton is never divided into districts for the purpose, but the members are all chosen on one ticket for the canton at large.

[3] The eight are Neuchâtel, Vaud, Valais, Freiburg, Berne, Lucerne, Schwyz, and Aargau. It must be remembered that we are speaking only of the cantons without Landsgemeinde.

council by direct popular vote have not been produced. The dreaded conflicts with the great council have not taken place, no doubt because the executive body is really subordinate, and is in the habit of giving way in case of disagreement. The party struggles over elections, which were at first severe, have become milder; and, in fact, election by the people seems on the whole to have helped the minority to get a part of the seats, the only two cantons where both parties are not represented being among those in which the choice is still made by the great council. The people, moreover, have shown themselves conservative in their selection of candidates; and although it is said that the quality of the men who hold the office has fallen, this may be attributed, in part at least, to the steady diminution in the political importance of the cantons, and the consequent difficulty in getting men of large calibre to accept the position.[1]

Method of dissolving the great council.

There is one provision to be found in several of the constitutions that is interesting, both for its oddity and because it throws light on Swiss political ideas. The reader will observe that the whole legislative power in the cantons is vested in a single chamber, whose acts the executive has no power to veto,[2] and the judiciary has no power to set aside,[3] so that there are none of those checks on

[1] Cf. Droz, *Etudes*, pp. 320–21.

[2] In Geneva the *Conseil d'Etat* can require a reconsideration of any measure which it did not itself introduce. Const. Arts. 53–54.

[3] This is the general principle in Switzerland, but there are exceptions. Thus the constitution of the canton of Uri (Art. 51) provides that any person injured in his private property or rights by a determination of the

hasty law-making with which we are familiar in America. For this reason, the Swiss dread the tyranny of the great council, and have devised sundry methods of preventing it. One of the most extraordinary is a process by which a certain number of citizens, varying in the different cantons from one to twelve thousand, can require a popular vote on the question whether the great council shall be dissolved. If a majority of the votes cast is in the affirmative, the term of the council comes to an end, and a new election is immediately held. Such a provision exists in the constitutions of seven of the German cantons; for democracy takes a somewhat different form among the Germans and the French in Switzerland.[1] The former, though more socialistic, are less ready to be guided and controlled by the government, while the French are inclined to respect the public authorities, and to regard them as commissioned to rule the people as their superior wisdom may direct. Hence it is in the Teutonic parts of Switzerland that we find most highly developed those institutions which are intended to limit the powers of the great council, and enable the people to protect themselves against any possible oppression on its part; that we find, in short, the greatest desire to substitute a pure for a representative democracy. The device we are now considering, the right

Landesgemeinde may protest, and if the meeting disregards his protest, the judge shall decide according to his conscience and his oath between the people and the claimant. There is a similar provision in the constitution of Unterwalden *nid dem Wald.*, Art. 43.

[1] These cantons are Berne, Lucerne, Aargau, Thurgau, Schaffhausen, Soleure, and Basle-City.

of recalling the council, as it is termed, has not, however, proved to be of much importance. Formerly it was sometimes used, and in one case, at least, with success;[1] but, owing to the shortening of the periods for which the councils are elected, and the general introduction of the referendum, or popular veto upon laws, which will be described in the next chapter, it is practically obsolete.

Dissolution by means of constitutional revision.

A less direct method of getting rid of the council, when it has ceased to represent the opinion of the people, is occasionally tried. It is that of revising the constitution, for in almost all the cantons the question of revision must be submitted to popular vote on the request of a certain number of citizens. The last instance of an attempt of this sort occurred in the canton of Ticino in 1890. The Radicals had been in power, until, owing to their errors, the Clericals obtained control of the great council, and proceeded to gerrymander the canton in their own interest. After a time the Radicals made up their minds that a majority of the people were on their side, although the condition of the electoral districts made it impossible for them to elect half the members of the great council; so they took advantage of a provision in the cantonal constitution, which gives any seven thousand citizens a right to require a popular vote on the question whether the constitution shall be revised or not. They procured the necessary signatures, and hoped by this process to test public opinion and upset the existing council; but the vote turned out

[1] This was in Aargau in 1862. *Unsere Zeit*, 1873, ii. p. 360.

so nearly even as to prove very little, and disturbances arose of such a serious nature that the federal government felt obliged to interfere. The incident illustrates how Swiss institutions are capable of being used, but it must not be supposed to be a fair specimen of cantonal politics at the present day. Ticino is, in fact, the one turbulent member of the Confederation, and plays the part of spoiled child in the family. All the other cantons are now quiet, orderly, and free from excessive party struggles.

Proportional representation.

Another device for preventing the oppressive use of power is that of proportional representation. This has recently been adopted in Ticino, Geneva, Neuchâtel, Zug, and Soleure, being applied to the election of the legislative body, and in Ticino to that of the executive council as well.[1] The method of procedure is not the same everywhere, and is necessarily of a somewhat complicated type, because there are, as a rule, more than two parties at Swiss elections, and hence the simpler forms of minority representation which take into account only a majority and minority would be entirely insufficient. This is true of the so-called cocked-hat system, whereby a man is allowed to vote for only two candidates where there are three places to be filled. The Swiss have, therefore, adopted more complex systems, in which each group of voters is given a number of seats as nearly as possible in proportion to its size.

[1] Cf. Droz, *Etudes*, pp. 500–4; Wuarin, *Amer. Acad. of Pol. Sci.*, Nov., 1895, p. 13. The system was introduced into Ticino, Geneva, and Soleure by constitutional amendments in 1891, 1892, and 1895. In the other two cantons it depends on statutes.

Ever since the subject of proportional representation was brought into general notice by Thomas Hare and John Stuart Mill, it has never ceased to interest political thinkers, and of late it has been advocated with great enthusiasm, and has given rise to quite a voluminous literature.[1] It is not, however, peculiarly a Swiss institution, and to treat it properly would require far more space than can be devoted to it here. Nor has the principle been applied in Switzerland long enough to furnish any very valuable experience, for the first elections under it did not take place until 1892; whereas in Illinois, for example, it has been in operation for nearly a quarter of a century. It may suffice, therefore, to point out that the condition of Swiss politics is singularly adapted for securing the benefits of the system and minimizing its defects. The benefits consist chiefly in making the elected body represent accurately the whole people, and in preventing gerrymandering and party tyranny. Now, in Switzerland the habit of choosing a number of representatives in each district prevails generally, and under these circumstances an election by a majority gives a much less accurate reproduction of the divisions of opinion among the people than where the districts are smaller and elect only one representative apiece.[2] Moreover, the opportunity of gaining a political advantage by a careful

[1] For a bibliography of the subject, see Appendix D. to Forney's *Political Reform by the Representation of Minorities.*

[2] Before proportional representation was adopted in Geneva, there were only three districts for the election of representatives to the great council. They are now chosen in a single district, but of course this is an extreme case.

arrangement of the districts is much greater. In regard to party tyranny, it may be observed when party feeling is hot in Switzerland, the issues are apt to turn on religious questions, and it is precisely in religious matters that there is the greatest danger of oppression.

The most important objection to proportional representation is the fact that almost every form of it which has yet been suggested places absolute power in the hands of the machine politicians who control the caucus, and thus deprives the independent voter of nearly all weight in elections.[1] But, as will be explained in the next chapter, Switzerland has neither a political machine nor independent voters at elections. The object of the reform there is not to prevent politics from de-

[1] A system of minority representation was recently adopted in Boston, by allowing each citizen to vote for only seven aldermen out of twelve. The result is that the two parties nominate seven candidates apiece, and the utmost the independent voter can accomplish is to defeat the worst two men out of the fourteen. Under the ordinary method of election the votes of the independents may turn the scale in favor of or against every man on the ticket, and hence the parties have a strong motive for selecting candidates who will win their support. But under the present system the managers of the caucus, knowing that five of their candidates are sure of election, have ceased to trouble themselves about the independents, and the average quality of the aldermen has consequently deteriorated. A gentleman, who was himself advocating a different method of proportional representation, justly remarked that as things now stand we are certain to have ten bad aldermen. The increased power of the caucus seems also to have been seriously felt in Illinois, to judge from expressions of opinion from that State quoted in Mr. Forney's book (pp. 73–75). M. Droz regards the whole matter as still in the experimental stage in Switzerland. For his views upon it, see his review of McCrackan's *Swiss Solutions of American Problems*, in his *Etudes*, pp. 500–4. That the Swiss themselves are not unanimous in regard to the merits of the system appears from the fact that it was voted down by the people of St. Gall in 1893, and of Berne in 1896.

generating into a corrupt trade, but simply to give to each class of opinion a fair influence in public affairs. There appears to be good ground for believing, therefore, that proportional representation will work well in Switzerland. But it is curious to note that, as often happens, custom is stronger than law, for the habit of voluntarily conceding places in the executive councils to the minority has spread far more rapidly than the legal machinery which is intended to bring about the same result.

The system of local government is not precisely the same in all parts of Switzerland, and differs especially in the French and German cantons, but still the principles on which it is based are so much alike everywhere that a general notion of them can be given in a few words.[1] The only local entities are the commune and the district.[2] The commune, which is on the average a smaller body than the American town or township, is the real centre of local political life, and as a rule in the German sections of the country its government resembles very closely that of the New England town. The general direction of public affairs, the decision of all the more important questions, and the appointment of the principal officers are vested in the assembly of all the citizens, or, as we should say, these things come before the town meeting.[3]

The local government.

The commune.

[1] Cf. Adams, ch. viii.; Vincent, pp. 136–39, and ch. xvi.; Orelli, § 23.

[2] In some of the smaller cantons there are no districts.

[3] A careful distinction is drawn between the matters affecting the whole body of inhabitants, and those relating to certain classes of public property, in which only a part of the citizens, the so-called *Bürger*, are inter-

For the conduct of current business, and the execution of the laws, the Assembly chooses a council, which corresponds to the selectmen, except that the chief of the body (*Gemeindeamman, Gemeindepresident, Sindaco,* or *Maire*), unlike the chairman of the selectmen, has more power than his colleagues, at least in some of the cantons.[1] In most of the French parts of Switzerland, and especially in the larger communes, the assembly of citizens, instead of conducting public affairs directly, elects a general or communal council which attends to most of the matters that come before the whole body of citizens in the German cantons. The French communes have thus two councils, — a larger one which deals with questions of general policy and all matters of great importance, and a smaller executive body with the mayor at its head. The Swiss communes are subjected to much more administrative supervision on the part of the cantonal authorities than is the case in America; but, on the other hand, they are free from the constant interference by means of special acts of the legislature which is so common here.

The district.

The district is an intermediate division between the canton and the commune; but, except in a few places, it is established merely for the convenience of administration, and is not a real polit-

ested. This distinction between the rights of the *Bürger* and *Einwohner* was formerly common, especially in German countries, and, although a good deal modified, remains in Switzerland to-day. What is said in the next applies only to the general administration which concerns the whole community.

[1] In Freiburg, which is less democratic than any other canton, this officer is appointed by the council of state. Deploige, p. 90.

ical community. The chief official is usually elected by popular vote, and is sometimes assisted by a council whose powers are mainly advisory. He represents the cantonal government, and with the aid of his subordinates carries out its orders, executes the laws, and acts as a connecting link between the canton and the commune.

From this brief description it will be observed that democracy in Switzerland is not merely a national or cantonal matter, but has its roots far down in the local bodies; and this gives it a stability and conservatism which it lacks in most other continental nations.

CHAPTER XII.

SWITZERLAND: THE REFERENDUM AND THE INITIATIVE.

The referendum arose from the absence of representative government.

Of all the remarkable institutions democracy has produced in Switzerland, the one that has attracted the greatest attention, and is the most deserving of study, is the popular voting upon laws, known as the referendum. The name, indeed, is not new, and was applied to a practice that existed long before the greater part of the country became democratic; but the modern institution, which is based on the conception of popular sovereignty, is very unlike the old one, which sprang from the nature of the federal tie. The two have, moreover, little or no direct historical connection with each other, and yet they may be traced to a great extent to the same cause, — the lack of a native representative system. It is curious that in Switzerland, almost alone among the countries north of the Alps, representative government did not arise spontaneously. In some other places the elected assemblies were smothered before they attained great strength, but in Switzerland they never developed at all. The fact is that owing to the absence of royal power, which was the great unifying force during the Middle Ages, the country did not become sufficiently consolidated to have a central legislature, and no one of the separate

communities that made up the Confederation was large enough by itself to need a representative system.[1] Some of the cities that were members of the league did, indeed, acquire great tracts of territory. This was notably true of Berne, and in her case traces of representative institutions made their appearance; but by that time absolute government had begun to prevail in Europe, and the patricians of the city succeeded in drawing all the power into their own hands. Under these conditions there was no place for a true representative body either in the Confederation or the cantons, and the ancient referendum grew up in its stead.

The ancient referendum.

The Confederation being a mere league of independent states, the delegates to its diet acted like ambassadors, in strict accordance with the instructions of their home governments; and, what is more, they were never given power to agree to a final settlement of matters of importance, but were simply directed to hear what was proposed and report. They were said to be commissioned *ad audiendum et referendum.* The old federal referendum meant, therefore, the right of the members of the Confederation to reserve questions for their own determination. It arose from a dread of intrusting any central authority with power to make binding decisions, and it did not disappear until Switzerland became a

In the Confederation.

[1] Switzerland was, it is true, a part of the Empire, but the connection was too slight to exert any marked influence on internal development, while the more immediate authority of the House of Habsburg was thrown off entirely.

united nation after the outbreak of the French Revolution.

In the Grisons.

A similar condition of things existed also in the Grisons and the Valais, which were not strictly a part of the Confederation, though closely affiliated with it (*Zugewandte Orte*). The Grisons had a government of the most marvelous complexity.[1] It was a confederation of three separate leagues, each of which was in turn composed of a number of Gemeinde or districts. These last were the political units, the final depositories of power, and their action was taken in Landsgemeinde, or mass meetings of all the citizens.[2] There was a council for each league, and also a common diet for all three; but none of these bodies had power to act on its own authority. Except in case of emergency or on matters of secondary importance, all of their decisions had to be submitted to the Gemeinde for approval.[3]

This system seems to have developed about the time of the Reformation, at least so far as the triple league was concerned, and the subjects which the referendum covered appear to have become gradually more and more extended, until they included almost everything

[1] See Ganzoni, *Beiträge zur Kenntniss des bündnerischen Referendums;* Coolidge, "Early History of the Referendum," *Eng. Hist. Rev.* 1891, p. 674.

[2] They did not all, however, count equally, but had one or more votes, according to their quota of the land tax. Curti, *Geschichte der Schweizerischen Volksgesetzgebung*, 2d ed. p. 11. Sometimes, as in the case of the Upper Engadine, there was a referendum from the Gemeinde to the Dörfe or villages of which it was composed. Ganzoni, pp. 10–12.

[3] Questions were decided by a majority, or rather plurality, of the votes of the Gemeinde without regard to the majority in each separate league. Ganzoni, pp. 20–24, 69–71.

within the competence of the central diet. The procedure was applied to foreign as well as to domestic affairs. The reception of representatives from other states, for example, was approved by the Gemeinde. An envoy to be sent abroad was selected, and his instructions were ratified by them; and finally it was settled that no communication could be sent to a foreign power until it had received their consent. So completely, indeed, were they looked upon as sovereigns that at last even the ceremonial announcements of royal births and marriages were duly forwarded to them by the central authorities of the triple league. Unfortunately the questions submitted to the Gemeinde were often so framed that they did not elicit a simple positive or negative response. Sometimes a direct question was not asked at all; and hence the answers were of all sorts, and it was by no means easy to extract from them the prevailing opinion. The result was complaint and recrimination between the districts and the officials who classified the returns. In short, the system was not organized with precision. In spite of its defects, however, it continued until it was overthrown by the French in 1800. Three years later it was restored, and, although far too clumsy a piece of mechanism for the nineteenth century, it lasted with some modifications down to 1854, when it was replaced by the modern referendum. At the same time, the federal character of the government was entirely swept away.

The Valais was a confederation with a similar microscopic organization.[1] Here the districts, though twelve

[1] Curti, pp. 10–11.

in number, were called *Zehnten*, or tenths; and the delegates from these met together to consult about common interests, taking the measures that were agreed upon *ad referendum*, that is, laying them before the Zehnten, whose votes counted equally in reaching the final decision. Here also the system lasted until the French Revolution, and was afterwards restored, to be replaced by a more modern form of procedure in 1839.

In the Valais.

In the canton of Berne there existed at one time a custom that resembled much more closely the modern referendum.[1] Berne was not like the Grisons and the Valais a confederation, but was governed by the aristocracy of the city, who ruled over the country districts, treating them like subject lands. In the middle of the fifteenth century, however, the stress of war induced the patricians to consult the country districts about levying an extraordinary tax. The process was repeated a score of times in the fifteenth century and much oftener in the sixteenth, being used chiefly in regard to military and religious matters. At first each district was requested to send two deputies to Berne to express its views on the question at issue, — a practice that seemed destined to give rise to a parliament rather than to the referendum. Perhaps it was a presentiment of such a result that caused the government to change the procedure, by sending officials of its own to collect the opinions of the district assemblies, or by requiring them to be for-

In Berne.

[1] See Curti, pp. 8–10; Deploige, *Le Referendum*, pp. 25–29; Chatelanat, *Zeitschrift für Schweiz. Statistik*, 1877, pp. 257–59.

warded in writing to the capital. In neither form, however, was the habit so much a recognition of political rights, as a device on the part of the patricians to fortify themselves in their own policy. This may be inferred by observing that the result was almost always favorable to their wishes, and it is made very clear by the fact that although the government had expressly promised not to make treaties or declare war without the consent of the people, yet when the districts grew so bold as to reject repeatedly plans for military reform, the practice of consulting them was given up altogether. It was used for the last time in 1610.[1]

A similar custom prevailed about the same time in Zurich, but it was never so fully developed.[2] The questions were not put in a form that required a categorical answer, affirmative or negative, and, in fact, the procedure was not sufficiently definite to lay the foundation for a political system.

In Zurich.

So much for the ancient referendum. The modern institution is quite different in its form and in its effects, and is based upon abstract theories of popular rights, derived mainly from the teachings of Rousseau. This writer had a strong aversion to representative government, and remarked in his celebrated "Contrat Social," that the English with all their boasted liberty were not really free, because they enjoyed their liberty only

The modern referendum.

The influence of Rousseau.

[1] An unsuccessful attempt to revive it was made in 1798, in hopes of sustaining the falling government of Berne.

[2] Curti, pp. 12–13; Stüssi, *Referendum und Initiative im Kanton Zürich*, pp. 3–5.

at the moment of choosing a parliament, and were absolutely under its rule until the next election. He declared that in order to realize true liberty the laws ought to be enacted directly by the people themselves, although he saw no method by which this could be done in a state that was too large to permit of a mass meeting of all the citizens. Rousseau's ideas of popular rights sank deep into the minds of his countrymen; and when the Swiss, who as a rule is extremely practical in politics, becomes fairly enamored of an abstract theory, he clings to it with a tenacity worthy of a martyr.

The referendum for constitutional questions not a Swiss invention.

In speaking of the modern referendum, however, as a Swiss invention, a distinction between constitutional questions and ordinary laws must be borne in mind. The principle that a sanction by popular vote is necessary for the adoption of a constitution cannot be said to have had its origin in Switzerland, for it has been recognized and acted upon in other places for more than a hundred years. As early as 1778 the General Court of Massachusetts submitted to the people a constitution which they rejected, and two years later the one that is in force to-day was drawn up by a convention, laid before the people, and ratified by a two thirds vote. In New Hampshire one constitution was likewise defeated at the polls in 1779, and another was accepted in 1784. The example of these two States was followed by Mississippi and Missouri on their admission to the Union in 1817 and 1820. In 1821 the practice was adopted by New York, and since that time

it has become almost universal.[1] In France also the constitutions of 1793, 1795, 1799, 1802, 1804, and 1815 were submitted to the people and ratified by them, although the first of these was in fact brushed aside before it actually went into effect.[2]

In Switzerland the principle was adopted for the first time in the case of the ephemeral constitution of 1802, and then in a most illusory shape; for although more votes were cast in the negative than in the affirmative, the constitution was declared adopted, on the theory that the citizens who did not vote at all should be treated as consenting.[3] After this no federal constitutional question was brought before the people until 1848. The cantons, moreover, did not begin to submit their constitutions to popular vote before 1830,[4] and the habit did not become universal among them until the federal constitution of 1848 made it obligatory.[5]

The credit for the referendum on ordinary laws belongs, on the other hand, entirely to the Swiss, for

[1] Oberholzer, *The Referendum in America*, ch. ii. Cf. Stimson, *Amer. Statute Law*, §§ 991, 995.

[2] Borgeaud, *Etablissement et Révision des Constitutions*, pt. iii. liv. ii. chs. ii., iii., and iv. The constitutions of the Second Empire were ratified in the same way.

[3] Curti, pp. 109–10; Borgeaud, pt. iii. liv. iii. ch. i. The Swiss constitution of 1798 contained a provision that amendments should be submitted to the people, but it was never applied. Borgeaud, *Ib.*

[4] In the course of 1830 and the four years following twenty revisions of cantonal constitutions took place, and everywhere, except at Freiburg, they were submitted to the people for ratification. Deploige, p. 37.

[5] Cf. Borgeaud, pt. iii. liv. iii. ch. ii.; Stüssi, *Ref. und Init. in den Schweizerkantonen*, pp. 9–65. This statement does not apply to the cantons with Landsgemeinde, or to Geneva, which had institutions of a similar nature. Blumer, *Schweiz. Bunderstaatsrecht*, 2d ed. Bd. I. pp. 57, 61.

the still-born French constitution of 1793, which contained a provision for a popular vote on laws, never went into operation,[1] and, excepting a sporadic use of the institution here and there, it has never existed in any other country. We are therefore led to consider the question to which allusion has been made in the beginning of this chapter, the question why it developed in Switzerland. The advocates of the referendum were prompted by a belief that it was an essential part of the sovereignty of the people rather than by a conviction of its utility, and in many of the debates on the subject its introduction was urged to a great extent on theoretical principles of abstract right, although usually opposed on purely practical grounds, the debates resembling those one commonly hears on the question of woman's suffrage.[2] A study of the period points, however, to the conclusion that the ultimate basis of the demand for the referendum, the real foundation of the belief in the right of the people to take a direct part in legislation, lay in the defective condition of the representative system.[2] Nor is this surprising. Up to the end of the last century the Swiss had no experience of representative government. Except for the Grisons and the Valais with their pecul-

The referendum for ordinary laws is Swiss.

It is due to the imperfections of Swiss representative government.

[1] Cf. Curti, pp. 83–85; Ganzoni, p. 4; Keller, *Das Volksinitiativrecht*, tit. i. ch. iii. (a).

[2] Curti gives abstracts of a number of these debates both in the Confederation and the cantons. It is a striking fact that Curti, like many other Swiss writers who are ardent admirers of the institution, scarcely alludes to its actual working.

[3] Deploige is decidedly of this opinion. *Le Referendum*, pp. 52–55.

iar federal structure, the cantons either made their laws by means of Landsgemeinde, and hence had no need of legislative chambers, or else the country districts were ruled by the dominant city, and the city by a few patrician families;[1] while the Confederation itself was so loosely organized that its Diet was not a true legislative body, but rather a congress of ambassadors. The result was that when representative institutions were copied from other countries after the French Revolution, the Swiss were not accustomed to them, and met with two difficulties. In the first place, they did not know how to provide the necessary checks and balances, and set up single chambers with absolute powers; and, in the second place, they had not learned to make those chambers reflect public opinion. The popular inexperience enabled the patricians to restore their ascendency in the cantons during the reaction that followed the fall of Napoleon, and although the movement of 1830 again broke their power and established democracy on a firm basis, the people had not acquired the art of limiting or controlling the representative bodies. They continued to be jealous of the men they elected, and looked on them as masters instead of servants of the public. The legislatures were, or, what for political purposes is the same thing, were believed to be, out of sympathy with the majority of the people, and as they were virtually omnipotent, there was constant irritation and discontent. The struggle for political

[1] In Geneva a constant struggle for power, with varying results, was maintained between the government and the assembly of all the citizens. Cf. Keller, tit. i. ch. iii. (b); Curti, pp. 38–48.

equality was, therefore, no sooner at an end, and representative bodies based on universal suffrage were no sooner established, than the demand for direct popular legislation began.[1] Its introduction has acted like oil upon troubled waters, for within the last twenty-five or thirty years the course of politics in the cantons has been much smoother than it was before; and although this result was by no means always coincident with the adoption of the referendum, and must be attributed mainly to the attainment of skill in the art of self-government on a large scale,[2] it is also due in part to the fact that the referendum, by putting an end to doubts about the real opinion of the majority upon disputed questions, has removed at once a means of agitation and a source of discontent.

The adoption of the veto.

Direct popular voting upon laws made its first appearance in a limited form, under the name of the veto, in the canton of St. Gall in 1831.[3] The veto, as the name implies, was a process by which the people could refuse their consent to a law passed by the legislature; and the member who

[1] Ganzoni (p. 6) remarks that the Grisons, which had a form of direct popular legislation, was the only canton without a Landsgemeinde in which disturbances did not take place.

[2] The Swiss have always had plenty of experience of self-government on a small scale by means of Landsgemeinde and communal assemblies, but before the French Revolution they had not tried it on a large scale.

[3] This applies, of course, only to the cantons without Landsgemeinde. The leading work on the history of direct popular legislation is that of Curti. A shorter but excellent account of it will be found in Deploige, pp. 38–78. See, also, Stüssi, *Ref. und Init. in den Schweizerkantonen*, and for St. Gall, *Nachweiser der Ergebnisse den Volksabstimmungen im Kanton St. Gallen, 1831–1894*.

proposed it in the constitutional convention had in mind the veto of the Roman Tribune of the People. The essential difference between the veto and the referendum consists in the fact that in the latter the fate of a law is determined by the majority of the votes actually cast, while in the veto a law is rejected only in case a majority of all the registered voters have voted in the negative. In other words, the men who do not vote at the referendum are neglected, while in the veto they are treated as if they had voted affirmatively.[1]

The veto was adopted by Rural Basle in 1832, by the Valais in 1839,[2] and by Lucerne in 1841; but the rejection by the people of St. Gall of a liberal law on the relation of church and state, and the fact that the veto in Lucerne was the work of the conservative government, which had come into power, caused the institution to be regarded as reactionary, and checked its extension for a time. In 1842 the great council of Zurich refused to introduce it, the Liberals, who cared more about progressive laws than about the means by which they were enacted, objecting to it as an obstacle to progress. It is, indeed, noteworthy that on a number of occasions direct popular legislation was opposed by Liberals and favored by Conservatives, on the ground

[1] The names are not always used with precision. Even Curti sometimes speaks of the optional referendum as the veto.

[2] The voting was done in the communal assemblies, and in the Valais the government summoned all the communal assemblies to consider every law. In the other cantons each communal assembly met only in case a demand was made by a certain number of its members, and unless a fixed quantity of votes were cast against the law by this process the rest of the assemblies were not convened. Deploige (p. 44) calls the system of the Valais an obligatory veto.

that it tended to prevent radical measures. During the following years the advance was slow. In 1844 the Valais exchanged the veto for an obligatory referendum, but abolished it four years later and returned to a pure representative system. The veto was adopted by Thurgau in 1849, and by Schaffhausen in 1852, and these were the last cantons to take it up. It was a clumsy device, ill adapted to ascertain the real opinion of the people, and henceforth it began to be replaced by a more perfect instrument.[1]

Different kinds of referendum.

The referendum in Switzerland is of two kinds, one of which is called the facultative or optional, and this is where the law must be submitted to popular vote if a certain number of citizens petition for it; the other is the obligatory, and requires, as the name implies, that all laws shall be submitted without the need of any petition. The obligatory form is obviously the most purely democratic, for it requires a direct popular action on every law; but the Swiss statesmen themselves consider it preferable on practical grounds also, because it avoids the agitation necessarily involved in the effort to collect the signatures to the petition.[2]

Its introduction.

Both these forms have been in general use, and it is curious that the first to be adopted was the obligatory. This, as we have seen, was in the Valais in 1844; and although the rejection of a num-

[1] It may be added that in 1845 and 1846 Vaud and Berne gave their legislatures power to submit any measures to the people, but in the latter at least the great council did not care to avail itself of the privilege. Curti, p. 257.

[2] Cf. Dubs, pt. i. p. 214; pt. ii. p. 155; Adams, p. 89.

ber of laws brought the experiment to a sudden end, an obligatory referendum for a limited class of financial matters was created in 1852.[1] Four years later a general optional referendum was adopted in Soleure,[2] and in 1858 Neuchâtel established an obligatory referendum for large appropriations, which was imitated by Vaud in 1861. Soon afterwards direct popular legislation began to advance rapidly. In 1863 Rural Basle adopted a general obligatory referendum, and in 1869 and 1870 Zurich, Berne, Soleure, Aargau, and Thurgau did the same, while Lucerne introduced it in the optional form. The example of these great cantons was followed before long by others, until at the present day all of them except the strongly Catholic and reactionary Freiburg possess a referendum of some kind for ordinary laws, about half having the obligatory and about half the optional form. At last the Confederation itself, after a long struggle, adopted an optional referendum in 1874.[3]

[1] In 1848 Schwyz and Zug gave up the Landsgemeinde, and the former substituted the referendum.

[2] This was called a veto, but was really a referendum. In 1861 St. Gall virtually turned its veto into a referendum.

[3] The state of the referendum in the Confederation and the cantons without Landsgemeinde, together with the dates of its introduction, is as follows. (The referendum is everywhere compulsory for changes in a constitution. In regard to other matters, to which alone the following table relates, the extent of its application varies, the provisions in the constitutions differing a good deal. As a rule, it applies to all laws and to all measures of a general character, an exception being sometimes made of such of the latter as are urgent. In all the cantons except the two Basles, St. Gall, Neuchâtel, and Geneva, it includes also appropriations above a certain sum, which is usually higher for single appropriations than for continuing ones, and which varies according to the size of the

The actual working of the referendum.

The real importance of the referendum as an element in legislation varies a great deal in the Confederation and in the several cantons, as may be seen by an examination of its actual working.

In the Confederation the referendum is obligatory for all amendments to the constitution; that is, these must

canton. The facts here stated, except the dates, are taken from the collection of constitutions published by the Federal Chancery in 1890, and the supplements thereto through 1895. There have been very few important changes in the referendum of late years.)

Confederation . .	Optional . . .	1874	
Zurich	Obligatory . .	1869	
Berne	Obligatory . .	1869	
Lucerne	Optional . . .	1869	
Schwyz . . .	Obligatory (Gen.) / Optional (Treaties)	1848 and 1876	
Zug	Optional . . .	1877	
Freiburg	None.		
Soleure	Obligatory . .	1869	(Optional 1856)
Basle, City . . .	Optional . . .	1875	
Basle, Rural . . .	Obligatory . .	1863	
Schaffhausen . . .	Obligatory . .	1895	(Optional 1876)
St. Gall	Optional . . .	1861 and 1875	
Grisons	Obligatory . .	1852	(But Fed. Ref. before)
Aargau	Obligatory . .	1870	
Thurgau	Obligatory . .	1869	
Ticino	Optional . . .	1883 and 1892	
Vaud	Optional (Gen.) . / Obligatory (Fin.)	1885 / 1861	
Valais	Obligatory (Fin.)	1852	(For earlier Refs. see text)
Neuchâtel	Optional . . .	1879	(Obligatory Fin. 1858)
Geneva	Optional . . .	1879	

In several of the cantons there are provisions that the great council, or a certain fraction thereof, can submit to the people matters that would not otherwise come before them, but this power is almost never used. Deploige, p. 113.

always be submitted to popular vote for ratification.[1] In the optional form, on the other hand, it exists on the demand of thirty thousand citizens or eight cantons, for all laws and all resolutions that have a general application, unless the Assembly declares the matter urgent,[2] — a power which that body is said to have used arbitrarily at times. The constitution nowhere defines a law or a vote of general application, and hence the question whether a measure falls within that description is determined by the Federal Assembly itself. This has been the source of no little complaint, and in fact the decisions of the Assembly are hard to reconcile with any general principle, although some of them are obvious enough. It has been wisely assumed, for example, that the provision does not apply to the annual budget, to treaties, or to concrete questions such as the decision of a conflict of authority, or the approval of a cantonal constitution. It has also been held not to apply to subventions voted for the construction of roads or the diking of streams.[3] In order to give time for presenting a petition for a referendum, the laws to which it is applicable do not go into effect until ninety days after they have been passed by the Assembly.[4]

Number of laws rejected in the Confederation.

As a matter of fact the cantons have never demanded the referendum, no doubt because it is less trouble to

[1] Const. Art. 123.

[2] Art. 89. Ordinary laws require only a majority of the popular vote, but amendments to the constitution need also the assent of a majority of the cantons.

[3] Deploige, pp. 95–98; Dubs, pt. ii. pp. 151–54; Droz, *Etudes*, pp. 465–66.

[4] Deploige, p. 98.

collect the signatures of thirty thousand individual voters than it is to call together eight legislatures and submit the action of each of them, as the law requires, to a popular vote of the canton. The power is, however, freely used by the people, as is shown by the fact that from the time of its introduction in 1874 through November, 1895, the requisite number of voters petitioned for the referendum in the case of twenty out of one hundred and eighty-two laws to which it could have been applied; that is, on the average, in the case of one law out of nine.[1] Of these twenty laws the people ratified six and rejected fourteen, or exactly one thirteenth of all the laws passed by the Assembly.

During the same period there have also been submitted to popular vote ten constitutional amendments proposed by the Assembly, of which six were accepted and four rejected.[2] It will be noticed that the proportion of constitutional amendment accepted is greater than that of ordinary laws, a result which is, of course, accounted for by the fact that all the former go to the people, while a petition for a vote on an ordinary statute is presented only in case it has provoked considerable hostility.

These figures are enough to show that the federal referendum is far from a mere formality. The use made of it has, however, been somewhat spasmodic. During the first three years after the adoption of the present constitution five laws were re-

Its use spasmodic.

[1] Referendums Tafel, Dec. 1, 1895.

[2] This does not include the four constitutional amendments proposed by private initiative.

jected and only two accepted. Then there came a quiet period of five years, in which no measure passed by the Assembly was condemned by the people, and in fact a popular vote on an ordinary statute was asked for only once. The calm was followed in 1882 by a storm of discontent; for the people had become so thoroughly out of sympathy with the radical tendencies of their representatives, and were so disgusted at the conduct of the party in power, that for three years they rejected every measure presented to them. Their ill will culminated in May, 1884, when they voted down four laws at a single stroke; but with this explosion the popular irritation seems to have exhausted itself, and perhaps we may add the legislators learned to be more cautious. Another period of quiet began, and during the next seven years the people again ratified everything. In 1891 the spell was broken; and out of five measures submitted to popular vote, two were voted down by large majorities. This was, indeed, the precursor of a third era of rejections, for during the last three years the popular vote has been negative in almost every case.[1] The spasmodic working of the

[1] Deploige (pp. 134–56) gives a very good description of the federal laws submitted to popular vote through 1891, with the reasons for their acceptance or rejection. These laws, and the subsequent ones (not including the measures brought forward by private initiative, which will be discussed later), are briefly as follows: — List of the federal referenda.

The federal referendum was first applied in 1875 in the case of a law defining the conditions, such as bankruptcy and pauperism, under which a citizen could be deprived of the right to vote, — conditions that had previously been determined by the cantons, and varied in the different

referendum in federal matters is, therefore, as marked parts of the country. This act was submitted to the people and rejected by a slight majority.

On the same day a vote was taken on another law establishing uniform rules of marriage and divorce, and regulating the keeping of registries of births, deaths, etc. The clause relating to divorce was repugnant both to the Catholics and the conservative Protestants, but the provisions about registry were a real necessity, and as the law had to be accepted or rejected as a whole, it was ratified by a small majority.

The next year an act to regulate the issue of banknotes was rejected by a heavy majority, the result being probably due to the fact that the voters did not understand the measure, for a similar law was enacted five years later without any demand for a referendum.

In 1876 and in 1877 statutes were passed imposing on all citizens excused from personal military service a property tax such as had previously been imposed by some cantons but not by others. On both occasions a popular vote was demanded, and the law was defeated at the polls. In the following year the measure was again passed by the Assembly with modifications which lightened the tax, and it went into effect without a petition for a referendum, — a result which is attributed less to the changes in the bill than to the fact that the people were tired of the question and felt that it must be settled.

At the same time that the people rejected the second of these statutes they voted upon two other laws. One of them regulated labor in factories, and was ratified by a small majority. The other defined the grounds on which a citizen could be deprived of the right to vote, and was more heavily rejected than the bill that had been presented on the same subject two years before.

The first quiet period now began, and within the five succeeding years the referendum was demanded only in the case of the subsidy for the railroad over the St. Gothard, which was ratified. During this period an amendment to the constitution repealing the provision against capital punishment was also accepted.

The era of tranquillity came to an end in July, 1882, when a law to prevent epidemics, which contained an extremely unpopular clause making vaccination compulsory, was rejected by a vote of nearly four to one; and this statute carried down with it a constitutional amendment authorizing the enactment of a federal law for the protection of patents. The Swiss frequently assert that the people consider each measure inde-

as it is significant, and will be further considered in

pendently, and are not influenced by other questions presented at the same time; but if that is true as a general rule, this case is clearly an exception, for not only is it the universal opinion that the patent amendment would have been accepted if it had stood alone, but it was actually carried through five years later by the largest proportion of affirmative votes ever cast.

In November of the same year a measure which created a passionate excitement came before the people. The federal constitution provides that primary education shall be controlled by the civil authorities, and in the public schools shall be such that children of all creeds can attend without offense to their feelings. (Const. Art. 27.) The injunction had not been observed by the cantons, and the Assembly voted to make an examination of the schools, and to appoint a secretary of education for the purpose. Instantly a cry was raised by the Catholics and Orthodox Protestants that the Radical majority intended to take religion away from the schools, and the measure was heavily voted down.

In May, 1884, four acts were voted upon at the same time, and they were all rejected. One of them provided for the transfer of criminal cases from the cantonal courts to the federal tribunal when the impartiality of the former was doubtful. This was the only one of the four to which any serious objection could be made, and the rest would no doubt have been accepted if public feeling had been in a normal condition. They were in fact harmless enough. One organized the federal department of justice and police; another repealed a tax on commercial travelers; and the fourth made an appropriation to provide a secretary for the legation at Washington. The absurdity of taking a popular vote on such a matter as the last is generally recognized.

Then came the second period, in which the people ratified every measure that came before them. The first of these was an amendment to the constitution, giving to the Confederation a monopoly of the manufacture and sale of alcoholic liquors. Not unnaturally it aroused opposition, but it was nevertheless accepted by a large majority in October, 1885, as was also a year and a half later the law for carrying it into effect. Another was the constitutional amendment concerning patents, which was adopted in 1887, and to which a reference has already been made. The law on the collection of debts and on bankruptcy was, indeed, the only one during this period over which a fierce party struggle took place, but it was carried with a narrow margin in 1889. The next year an amend-

connection with the extraordinary stability of the political parties.

ment to the constitution, authorizing the passage of a federal law on the compulsory insurance of workmen, was ratified by an enormous majority.

After this vote the second period of uninterrupted acceptances came to an end, and early in 1891 an act granting pensions to public officials who became incapacitated after long service was rejected by a majority of more than two hundred and fifty thousand votes, the largest that has ever been known; the result being due to a dislike of expense, and to the jealousy entertained by the mass of the people for what they term somewhat unjustly the bureaucracy.

During the same year three measures were accepted without very serious difficulty. One of them was an amendment of the constitution creating a right on the part of any fifty thousand citizens to propose a partial revision of the constitution and require a popular vote thereon, a matter which will be more fully discussed later. Another was an amendment giving the federal government power to establish a national bank with the exclusive right to issue notes. The third was a protective tariff, enacted in order to exert a pressure on France, and induce her to negotiate a commercial treaty.

The last measure submitted to the people in that year marks the beginning of a third period of rejection, — not, perhaps, quite so violent as the one which had occurred at the beginning of the previous decade, but still strongly marked. This measure, the purchase by the Confederation of the stock of the Central Railroad Company, was opposed by men who disliked the idea of a great increase in the staff of federal officials, by men who did not approve of state ownership of railroads, and by men who approved of the principle, but complained that there was no general plan for carrying it out, and that the price, which they considered excessive, would go into the pockets of speculators. The opposition was so strong that the measure was rejected by a vote of more than two to one.

During the next two years, the referendum was not demanded on any act passed by the Assembly; but in March, 1894, a vote was taken on a constitutional amendment proposed by that body. This was designed to give the Confederation power to legislate on labor organizations, and was so broad in its terms as to authorize a law compelling workmen to join the trade unions. The opponents of socialistic principles, who are at

The Confederation furnishes an example of the working of the optional referendum. In some of the cantons the obligatory form can be studied, and an examination of the results in a few of them will show how far it is effective.

Number of laws rejected in the cantons.

present very numerous in Switzerland, were alarmed, and the amendment was defeated. (For this use of the referendum and those that follow, see the *Bib. Univ.*, *passim*.)

In 1895 three more measures came before the people. The first, a law organizing the diplomatic and consular service, seems to have been open to no grave objections, but was disliked by the parts of the country which had little commercial relations with foreign lands, on the ground that it would entail additional expense, and was voted down.

The next, a constitutional amendment, conferring on the Confederation a monopoly of the manufacture of friction matches, was based on a desire to relieve the sufferings of a small colony of workmen, who contracted necrosis by making sulphur matches. It is said that the Assembly passed the amendment in the hope that the people would reject it, and, if so, they were not disappointed, for it was defeated by the votes of the men who are opposed to further centralization, and of those who object to state monopolies in general and to bad matches in particular.

The third was an amendment designed to place the army more completely under the control of the national government. It was supported by the bulk of the political leaders and by almost the entire press, but was heavily voted down, the diminution of cantonal authority which it involved being repugnant to all but a few of the largest German cantons.

Finally, in 1896, a code of discipline in the army, which increased the authority of the federal military department, was voted down by a huge majority, and a law of no great political importance, on the trade in animals, by a small one ; while at the same time a law on the accounts of railroads, which was a step towards state ownership, was ratified in spite of fierce opposition. The referendum is now pending upon an act creating a government bank, with a strong probability of its rejection.

The following is a summary of all the popular votes in the Confederation since the adoption of the present constitution, including the matters brought forward by the initiative (in the case of constitutional amendments, the vote of the cantons is placed beneath the popular vote): —

It is fortunate that very elaborate statistics have

Date.	Measure.	Result.	Aff. Votes.	Neg. Votes.
1874, Apr. 19	Constitution	Acc.	340,199 14½	198,013 7½
1875, May 23	Deprivation of political rights	Rej.	202,583	207,263
1875, May 23	Marriage and registry	Acc.	213,199	205,069
1876, April 23	Issue of banknotes	Rej.	120,068	193,253
1876, July 9	Tax on exemption from military service	Rej.	156,157	184,894
1877, Oct. 21	Labor in factories	Acc.	181,204	170,857
1877, Oct. 21	Tax on exemption from military service	Rej.	170,223	181,383
1877, Oct. 21	Deprivation of political rights	Rej.	131,557	213,230
1879, Jan. 19	Subsidy to Alpine R. R.	Acc.	278,731	115,571
1879, May 18	Const. amend. to permit capital punishment	Acc.	200,485 15	181,588 7
1880, Oct. 31	*Init.* Total Rev. of Const. in order to create banknote monopoly	Rej.	121,099 4½	260,126 17½
1882, July 30	Prevention of epidemics	Rej.	68,027	254,340
1882, July 30	Const. amend. on patents	Rej.	141,616 7½	156,658 14½
1882, Nov. 26	Fed. Sec'y. of education	Rej.	172,010	318,139
1884, May 11	Organization of Dept. of Justice	Rej.	149,729	214,916
1884, May 11	Repeal of tax on com'l. travelers	Rej.	174,195	189,550
1884, May 11	Approp. for Sec. of Leg. at Washington	Rej.	137,824	219,728
1884, May 11	Removal of criminal cases	Rej.	159,068	202,773
1885, Oct. 25	Const. amend. creating alcohol monopoly	Acc.	230,250 15	157,463 7
1887, May 15	Liquor law	Acc.	267,122	138,496
1887, July 10	Const. amend. on patents	Acc.	203,506 20½	57,862 1½
1889, Nov. 17	Bankruptcy law	Acc.	244,317	217,921
1890, Oct. 26	Const. amend. on compulsory ins. of workmen	Acc.	283,228 20½	92,200 1½
1891, Mar. 15	Pensions for officials	Rej.	91,851	353,977
1891, July 5	Const. amend. on right of initiative	Acc.	183,029 18	120,599 4
1891, Oct. 18	Const. amend. on banknote monopoly	Acc.	231,578 14	158,651 8
1891, Oct. 18	The tariff	Acc.	220,004	158,934

been published in the case of Zurich,[1] the most democratic of the larger cantons, and one whose constitution expresses the Swiss democratic ideal in a singularly direct way when it says that "the people exercise the legislative power with the assistance of the cantonal council."[2] The obligatory referendum was introduced here in 1869, and applies to laws and all other measures passed by the cantonal council which are not executive in the strictest sense; to single appropriations of more than two hundred and fifty thousand francs; and to any others that entail a continuing

Zurich.

Date.	Measure.	Result.	Aff. Votes.	Neg. Votes.
1891, Dec. 6	Purchase of stock of Central R. R. Co.	Rej.	130,729	289,406
1893, Aug. 20	*Init.* Const. amend. on slaughtering animals	Acc.	191,527 11½	127,101 10½
1894, Mar. 5	Const. amend. on trade unions	Rej.	135,718 8½	158,492 13½
1894, June 3	*Init.* Const. amend. on duty of state to furnish work for laborers	Rej.	75,880 0	308,289 22
1894, Nov. 4	*Init.* Const. amend. to divide customs duties among the cantons	Rej.	145,462 8½	350,639 13½
1895, Feb. 3	Diplomatic and consular service	Rej.	124,517	177,991
1895, Sept. 29	Const. amend. creating state monopoly of matches	Rej.	140,174 7½	184,109 14½
1895, Nov. 3	Const. amend. centralizing the army	Rej.	195,178 4½	269,751 17½
1896, Oct. 4	Trade in animals	Rej.	170,820	211,638
1896, Oct. 4	Railroad accounts	Acc.	219,011	166,872
1896, Oct. 4	Military discipline	Rej.	75,571	308,247

[1] Stüssi, *Ref. und Init. im Kanton Zürich*, 1886; *Ref. und Init. in den Schweizerkantonen*, 1893.

[2] Const. Zurich, Art. 28.

annual expense of over twenty thousand francs.[1] There are on the average two popular votings a year, at each of which three or four laws are presented. In the twenty-four years, from 1869 through August, 1893, there were submitted to the people one hundred and twenty-eight measures proposed by the cantonal council, and of these ninety-nine were adopted, and twenty-nine, or a little less than a quarter, were rejected.[2] During the same time twenty-nine federal questions were also voted upon, and of these the people of the canton approved of twenty-two and voted against seven.

Berne.

The obligatory referendum was established in Berne also in 1869, and from that time through April, 1896, the people voted on ninety-seven cantonal measures, of which sixty-nine were ratified, and twenty-eight, or about two sevenths, were voted down.[3]

Soleure.

In Soleure the proportion is not very different. From 1870 to 1891 fifty-one laws were ratified and fifteen rejected out of a total of sixty-six.[4]

[1] Const. Zurich, Art. 30.

[2] This includes constitutional questions, but does not include any measures proposed by means of the initiative. These figures are taken from the tables at the end of Stüssi's pamphlets, but do not agree precisely with his own computation on page 38 of his *Ref. und Init. im Kanton Zürich.*

[3] This includes constitutional questions, but does not include a law brought forward by the initiative in 1895 and accepted. These figures through 1877 are taken from Chatelanat, *Zeitschrift für Schweiz. Statistik*, 1877, pp. 228–29; for the subsequent time they have been kindly compiled for the author from the records by Herr Emil Hügli, of Berne.

[4] The figures for Soleure and Aargau are taken from Deploige, pp. 161–62.

In these three cantons, Zurich, Berne, and Soleure, the people have refused to sanction about a quarter of the laws passed by the legislature, but in Aargau the result is much less favorable. Here, as in Soleure, the referendum was adopted in the obligatory form in 1870, and from that year to 1883 there were submitted to popular vote forty-six measures, of which twenty-five were accepted, and twenty-one rejected. From 1885 to 1889 six more were accepted and four voted down, so that during all this time twenty-five out of fifty-six, or nearly one half, were lost. The proportion of laws rejected by the people under the obligatory referendum varies therefore in different cantons from a little less than a quarter to a little less than a half.

Aargau.

In St. Gall, where the referendum for ordinary laws has existed in the optional form since 1861, its application had been effectually demanded through 1894 in the case of sixteen measures out of a possible one hundred and forty-two, — a proportion almost exactly identical with that of the Confederation. The fraction of laws rejected has, however, been greater, for of these sixteen only two were ratified and the rest rejected.[1]

St. Gall.

A study of the working of the referendum in the cantons shows the spasmodic action that has already been noted in the case of federal laws. This is true both of the obligatory and the optional forms, although in the cantons the periods of rejection

Spasmodic working.

[1] *Nachweiser der Ergebnisse der Volksabstimmungen im Kt. St. Gallen*, 1831–94.

are not quite so regular in their recurrence, not quite so rhythmical, if such an expression may be used, as in the Confederation.[1]

The referendum little used in the French cantons.

The French cantons furnish no data of any value on the subject, on account of the different aspect of democracy in that part of the country. Among the Germans there is more jealousy and distrust of the government and more confidence in the direct action of the people, while the French are less democratic in the Swiss sense of the term, and more inclined to follow the lead of the regular authorities. Hence the referendum is peculiarly

[1] In Zurich, where the referendum is obligatory, the negative votes on measures proposed by the cantonal council, arranged by years, are as follows:—

1870..2	1876..0	1882..1	1888..3
1871..0	1877..1	1883..0	1889..0
1872..3	1878..4	1884..3	1890..0
1873..2	1879..4	1885..1	1891..1
1874..0	1880..0	1886..0	1892..1
1875..2	1881..1	1887..0	1893..0

In Berne, where it is also obligatory, they are as follows:—

1869..0	1873..4	1877..3	1881..1	1885..2	1889..0	1893..1
1870..0	1874..0	1878..2	1882..0	1886..2	1890..1	1894..1
1871..0	1875..0	1879..2	1883..0	1887..0	1891..1	1895..1
1872..0	1876..0	1880..0	1884..0	1888..2	1892..0	1896..5

In St. Gall, where the referendum is optional, the negative votes are as follows (not including six amendments to the constitution proposed by private initiative in 1878 and rejected):—

1862..0	1867..0	1872..0	1877..1	1882..0	1887..0	1892..1
1863..4	1868..2	1873..2	1878..0	1883..0	1888..0	1893..1*
1864..0	1869..0	1874..0	1879..1	1884..0	1889..0	1894..0
1865..0	1870..1	1875..7[1]	1880..0	1885..1	1890..0	
1866..0	1871..0	1876..1	1881..0	1886..0	1891..0	

* Constitutional amendments for which the referendum is compulsory.

a German institution; and although the French have adopted it, they have taken it almost exclusively in the optional or milder form, and have made little use of it.[1] In Vaud, indeed, it does not appear to have been put into operation at all, and in Geneva and Neuchâtel it has been used only twice, one of the measures having been adopted and the other rejected in each canton.[2]

Character of laws rejected.

These figures prove that in the Confederation and the German cantons the referendum is an effective institution, for they show that it prevents the enactment of a great many laws that the people do not like; and hence it is important to consider the character of the laws that are voted down. The history of popular voting in Switzerland reveals a marked tendency to reject measures that are in any way radical, and this is a very instructive fact, because it means that the people are really more conservative than their representatives. The tendency is not so manifest in the Confederation as in some of the cantons.[3] In Zurich, for example, a

Radical measures and labor laws.

[1] The Valais, which is partly French, has an obligatory referendum for appropriations of over 60,000 francs; but it is never used, because care is taken not to exceed that sum in any single appropriation. In Vaud, where a popular vote is obligatory for large appropriations, they are always ratified. In the Italian canton of Ticino the optional referendum was introduced in 1883, and from that time through 1891 it had been used three times, one of the measures voted on being ratified and the other two rejected. Deploige, pp. 162–67.

[2] *Id.* This does not include the referendum for constitutional questions; nor in Vaud for large appropriations. See preceding note. From tables for these cantons, made for the writer by Herr Hügli, it appears that another law was rejected in Geneva in March, 1896. The initiative has been used in both Vaud and Neuchâtel. See p. 286, note 1, *infra*.

[3] The factory act, the liquor laws, and the constitutional amendment on the compulsory insurance of workmen can be cited as examples of

law to give daughters an equal inheritance with sons in the estates of their parents was passed by the legislature in 1878, but defeated at the polls by a vote of more than two to one; and it was not until nine years later that this simple act of justice was sanctioned by the people.

Strange as it may seem, the dislike of radical projects applies to labor laws and other measures designed to improve the condition of the working-classes, although laws of that kind are commonly believed to be highly popular with the vast majority of the people. For illustrations of this we may again refer to Zurich, a canton largely devoted to manufacturing, and hence containing a great number of operatives. In 1870 the people rejected there a cantonal law which limited the duration of labor in factories to twelve hours a day, which protected the women who work in them, and forbade the employment of children during the years when they were required to go to school. In 1877 they voted against a federal factory law intended for a similar purpose. In the following year they rejected a cantonal law to establish a school of weaving; and in 1881 they voted down another law providing for the compulsory insurance of workmen against sickness, regulating their relations with their employers, and making the latter liable for injuries to their employees caused by accidents.

radical federal measures that have been sanctioned by the people; while the law on epidemics, the act relating to education, the contract to buy the stock of the Central R. R. Co., and the constitutional amendments about trade unions and the monopoly of matches, may be considered cases of radical measures passed by the legislature and defeated at the polls. Cf. Droz, "Etatism et Libéralism," *Bib. Univ.*, Dec., 1895, pp. 461–64.

Moreover, they have repeatedly rejected measures for increasing the amount of required education in the public schools,[1] and they have refused to provide free text-books for the children.[2] All this does not mean that the people are certain to reject laws intended for the benefit of the working-classes; on the contrary, they voted in Zurich heavily in favor of the recent amendment to the federal constitution giving the Confederation power to enact a statute on the compulsory insurance of workmen. But it does mean that they are less ready to sanction measures of this character than the legislature is to pass them.

To the statement that, as a rule, the people do not like radical measures, it will be objected that in several of the Swiss cantons progressive taxation has been ratified by popular vote. But progressive taxation in Switzerland is not quite so drastic a matter as it appears, on account of the prevalence of tax-dodging.[3] In Zurich, indeed, where the people sanctioned the laws for progressive taxation, they rejected at the same time

[1] April 14, 1872; July 5, 1885; Dec. 9, 1888; and Aug. 9, 1891. The second of these laws was proposed by the initiative, but the cantonal council advised its adoption.

[2] Oct. 30, 1887, and Dec. 9, 1888. The first of these was proposed by the initiative. Stüssi, in his *Ref. und Init. im Kanton Zürich*, discusses all these laws, and tries to show that the people have not shown themselves less progressive than their representatives.

[3] An illustration of avoiding progressive taxation was related to the writer by a prominent banker in Geneva. When such a tax was adopted in Vaud, a large manufacturer in that canton went through the form of selling his factory to his son, and took a note for the full value. He then moved his residence to Geneva, where taxation is not progressive, while the son set off the debt against the property.

a provision making an official inventory of the estates of deceased persons compulsory, for fear that the middle classes, who had no securities which could be easily concealed, would not escape the tax as much as the rich.[1]

Sir Henry Maine refers to the conservative nature of the referendum, in support of his opinion that a democracy is unprogressive, and explains it by saying: "It is possible, by agitation or exhortation, to produce in the mind of the average citizen a vague impression that he desires a particular change. But, when the agitation has settled down on the dregs, when the excitement has died away, when the subject has been threshed out, when the law is before him in all its detail, he is sure to find in it much that is likely to disturb his habits, his ideas, his prejudices, or his interests; and so, in the long run, he votes 'No' to every proposal"[2] In the case of labor laws the same truth may be stated in a more concrete form. Every law designed for the benefit of the workingman involves, or rather is liable to involve, a present sacrifice on his part; but the sacrifice is not evident so long as the principle of the law is merely stated in general terms. Any workingman, for example, can easily understand the wisdom of forbidding the labor of children of immature years, but

[1] Stüssi, *Ref. und Init. im Kanton Zürich*, p. 48. This was in 1870. By means of the initiative the question of a compulsory inventory was again brought forward in Zurich in 1883, and although the cantonal council advised its adoption, it was rejected by a popular vote of more than two to one. A similar law was rejected by the people of Berne in 1890. The people of Zurich seem to have rejected recently a progressive inheritance tax. *Bib. Univ.*, Dec., 1895, p. 472.

[2] *Popular Government*, p. 97.

it is not easy for him to see how he gains anything by losing the wages his son has been earning in the mill. Hence, the same man may very well vote for a candidate or a party that proposes to enact a labor law, and yet find himself bitterly opposed to that very law when it is presented to him for approval. Moreover, the referendum places in the hands of employers a means of exerting a direct pressure upon their operatives which a secret ballot has not the slightest tendency to mitigate. The rejection of the first factory act in Zurich is said to have been largely due to the influence of the mill-owners,[1] and a little reflection will show how they might bring about the defeat of a labor law. Suppose, for example, that an act limiting the hours of work in factories is passed by the legislature, and that a demand is made for a popular vote. Then suppose the employers announce that if the law is ratified they will be obliged to cut down wages. In such a case, many of the operatives, not caring to run the risk of a decrease in wages or a strike, will be likely to vote against the act and kill it.

Laws that are too comprehensive.

It may also be observed that the people object to laws which cover a great deal of ground, which are complicated, or try to effect too much at once. To this cause Stüssi attributes the rejection in Zurich of two important measures on education and on labor.[2] The symptom is a very healthy one, for it shows that the people want to understand the laws they are enacting, and cannot be driven

[1] Stüssi, *Ref. und Init. im Kanton Zürich*, pp. 48–49.

[2] *Ref. und Init. im Kanton Zürich*, pp. 53–55.

or hurried into measures whose bearing is not clear to them.

Measures involving expense.

A sentiment of more doubtful merit is the dislike of spending money, which crops up at times in a way that is almost ludicrous; as, for example, when the people rejected the bill to provide a Secretary of Legation at Washington. This tendency, which seems to be universal,[1] applies especially to proposals for increasing the salaries of public officers, and in fact the largest number of negative votes ever cast on a federal law were thrown against the bill for pensioning officials. It may be remarked in this connection that two of the cantons, Berne and Aargau, at one time carried the theory of the referendum so far as to submit to popular vote the budget or general appropriation bill. The experiment was a mistake, and had a not unnatural result. The budget was rejected more than once, until at last the government found it absolutely necessary to withdraw the matter from popular control.[2] The people might well be expected to object to such a loss of power, and in Berne they were induced to ratify it by the addition of a clause suppressing a number of offices, which made the measure more palatable; while in Aargau the same result was obtained by means of concessions to the opposition.[3] Some of the Swiss writers feel that such a

[1] It may be noticed that, of the fourteen laws rejected at the referendum in St. Gall, eight have been tax laws.

[2] In Berne, where the budget is voted for four years at a time, an addition to it was rejected in 1877, and in 1879 the whole budget was voted down.

[3] Deploige, pp. 116, 162.

tendency toward economy is a cause for reproach, and try to minimize it, but most Americans would prefer it to that inclination to squander the public moneys, which seems to be a besetting sin with democracies. The fact is that in Switzerland there are no great cities with an enormous proletarial class, which does not feel the weight of the public burdens, or realize that an increase of taxation affects its own comfort and prosperity; and, on the other hand, the peasants are in the habit of dealing with small sums, and do not see the need of liberal salaries for the men who do the public work. The very highest Swiss officials are, indeed, paid upon a scale that would be considered in any other country ridiculously small.

Criticisms of the referendum.

Smallness of the vote.

Certain criticisms upon the working of the referendum are often made in Switzerland. One of these relates to the small size of the vote cast. It is sometimes said that the result of the ballot does not fairly represent popular opinion, because in most cases the opponents of a measure go to the polls in larger proportion than its supporters, so that the men who stay at home are on the whole favorable to it.[1] Whether this is universally true or not, it is certain that the citizens stay at home a great deal more than could be wished. Thus in Berne only about forty-three per cent. of the voters cast their ballots at the referendum, although sixty-three per cent. of them vote at elections,[2] — a difference which

Berne.

[1] Cf. *Journal de Genève*, quoted by Marsauche, pp. 242–43.

[2] This includes only the valid votes. Chatelanat, *Zeitschrift für Schweiz. Stat.*, 1877, pp. 228–32; Deploige, p. 160. In Soleure the average vote

proves either that the people take less interest in the former than in the latter, or that they find it easier to choose between the candidates for office than to form an opinion on the merits of a law. The proportion of citizens who vote at the referendum varies amazingly according to the character of the measure in question, and between 1869 and 1878 it ran in Berne all the way from 81.6 per cent. down to 20.2 per cent.[1] It is worth while to observe that the largest vote was cast on religious questions; the next on political ones; then came railroad; then school; then financial; then economic ones; while the smallest vote was polled on administrative regulations, no doubt because the people felt that they did not understand them. This list of subjects shows that, cool and sensible as the Swiss are, they are not exempt from the popular tendency, good or bad, to take more interest in sensational than in practical matters.

Zurich.

The vote cast in Zurich is larger than in Berne, although not to the extent that it would appear at first sight. It stands nominally at 74.4 per cent. of the registered voters; but the law allows the curious privilege of voting on cantonal matters by proxy, and hence a good many people send their ballots to the polls by a friend, and omit to fill out the part that relates to any matter in which they are not interested. The number of blanks reached on one occasion the enormous figure of 32 per cent. of the votes cast, and it

at the referendum seems to be less than fifty per cent.; while at elections it is much higher. Deploige, p. 161.

[1] Chatelanat, *Zeitschrift*, 1877, p. 232.

has averaged nearly 16 per cent., or, in other words, 12 per cent. of the registered voters. Deducting this from the total vote cast, we find that the real average vote on cantonal referenda is 62.6 per cent., while at elections it is 71.3 per cent.[1] After making the deduction the figures are still considerably better than those obtained in Berne, and the difference is no doubt owing to the habit of imposing a fine for a failure to vote, which has long been in vogue in many of the communes,[2] and was extended in 1890 to the whole canton.

Rural Basle.

The half canton of Rural Basle furnishes the most striking example of the small attendance at the referendum, because until 1892 its laws required for the ratification of any measure not only that a majority of all the votes cast should be affirmative, but also that a majority of all the persons qualified should take part in the vote.[3] Now in the twenty years from 1864 to 1884 the people voted on one hundred and two laws, of which forty-eight were accepted and twenty-eight were rejected, while twenty-six were not ratified on account of the absence of a majority of the voters. The popular indifference seems, indeed, to have been progressive; for during the last five years

[1] These figures are taken from the results through 1885. Stüssi, *Ref. und Init. im Kanton Zürich*, pp. 39–43. Since the introduction in 1890 of a general fine for failure to vote, the average valid vote at cantonal referenda has been 64.2 per cent. See the Table at the end of Stüssi's *Ref. und Init. in den Schweizerkantonen.*

[2] Stüssi, *Zürich*, pp. 44–47. This practice exists to a greater or less extent in several of the cantons, and has a tendency to spread. Deploige, pp. 112, 120, 122. It appears to exist in St. Gall, where the proportion of voters taking part at the referendum averages 65 per cent.

[3] This was changed by the Const. of 1892, § 50.

of this period seventeen measures were submitted to the people, of which only three were accepted, five were rejected, and nine, or more than one half, failed through lack of attendance.[1] One can imagine that the legislators must have learned to look on their task as a thankless one. The result in Rural Basle is not due to any peculiar indifference on the part of the voters there. It would be the same in other cantons if the laws were similar. In Berne, for example, a majority of the citizens have taken part only in thirteen out of ninety-seven referenda, and up to 1888 one law alone received the affirmative votes of half the qualified voters in the canton.[2] Even at national referenda, which excite a greater interest, the average proportion of the voters in the Confederation who go to the polls is less than sixty per cent., and no law has ever been ratified by a majority of the qualified voters.[3] These figures illustrate the truth that under no form of government can the people as a whole really rule; for they show that with the most democratic system ever devised, the laws are in fact made only by that portion of the community which takes a genuine interest in public affairs.

Absence of popular discussion.

Another criticism is often made which relates more particularly to the method of conducting the referendum. It is said that the people have not sufficient means of forming a serious

[1] Deploige, p. 162.

[2] Deploige, p. 160, gives the figures to 1888, when a majority had taken part in the vote only nine times. Since he wrote a majority have voted four times, and the Constitution of 1893 was ratified by nearly if not quite a majority of the voters.

[3] See the tables on pp. 139, 141, of the *Nachweiser der Ergebnisse der Volksabstimmungen im Kt. St. Gallen.*

opinion on the measures submitted to them, and this is no doubt true. The Swiss have, indeed, the wise habit of printing and distributing the laws to be voted upon, and in fact a copy is sent to every citizen some time before the vote takes place.[1] This is done at no light cost, as may be judged from the fact that the expense of printing the federal bankruptcy law amounted to 47,696 francs, and the total cost to the state of taking the popular vote was about 130,000 francs. Nor do these appear to be unusual figures.[2] But an intelligent judgment of the value of a law cannot be based on a mere perusal of the text, and as yet no effective method has been discovered of giving the people any real enlightenment about the object and bearing of the measures laid before them.[3] In the case of federal laws, the matter is left entirely to the press and the platform, with the result that sometimes a great deal of discussion takes place, and sometimes very little.

A more earnest attempt to insure the instruction of the public has been made in several of the cantons, although without much success. Wherever the referendum is compulsory, the great council is directed to prepare a message explaining the intent and meaning of the law; but as this is commonly a mere panegyric of the measure,[4] the voters pay little or no attention to it, if, indeed, they read it at all. In a couple of cantons, moreover, an effort has been made to provoke

[1] Deploige, pp. 104, 117.
[2] Adams, p. 98, Loumyer's note.
[3] Cf. Deploige, pp. 117-20.
[4] Even Stüssi admits this. *Zürich*, p. 36.

discussion by providing that when the citizens meet at the polls a debate shall take place before the voting begins; but this again has proved abortive, for when the presiding officer asks if any one wishes to speak, no one ever responds.[1] These experiments confirm the ancient proverb about the ease of bringing a horse to the water, and the impossibility of forcing him to drink. They show that the people cannot be compelled to discuss seriously a measure in which they are not interested. It does not follow, however, that because the people will not debate a law they vote entirely in the dark. On the contrary, if the question is one of general policy, they may have very decided and rational views about it; and this points to the advisability of confining the referendum to matters on which the ordinary man can readily form an opinion, and not extending it to subjects with which an expert alone is conversant. But such a distinction has not been made in Switzerland.

Lowering of the sense of legislative responsibility.

A third complaint one hears is that the referendum lowers the sense of responsibility of the representatives in the legislature; but how far this charge is well founded it is not easy to say. The question is one of opinion which cannot be measured by statistics, and hence the answer must depend a great deal on the predisposition of the person who makes it. We should naturally expect a representative to feel less responsibility when his action, instead of being final, is reviewed by his constituents, and this would appear to be more or less the case in Switzerland, at least where the referendum is compul-

[1] Deploige, p. 120.

sory. An eminent jurist in Berne once told the writer that the members of the cantonal legislature would vote for a measure of which they disapproved, relying on the people to reject it, and that he had known men to vote for a law in the great council and against it at the polls. But this gentleman belonged to a party that stood in a hopeless minority, and was, in fact, decidedly out of sympathy with current politics. That legislators have occasionally voted for a measure merely to get it out of the way, hoping that the people would refuse to sanction it, is altogether probable;[1] and there can be no doubt that either from political motives or from a want of courage to face popular hostility, they have at times opposed the ratification of laws which they had helped to pass; but these cases do not appear to be common.[2] The truth seems to be that the sense of responsibility is lessened to some extent, but not enough to impair substantially the efficiency and conscientiousness of the representatives.

In Switzerland the opinions both of scholars and statesmen on the value of the referendum are most divergent.[3] Some men extol it as the most perfect institution, in theory and

Swiss opinions of the referendum.

[1] It is said that the recent constitutional amendment about the monopoly of matches was passed by the Assembly because it was tired of the subject and foresaw that the measure would be rejected by the people. *Bib. Univ.*, Sept., 1895, p. 657.

[2] This happened in the case of the federal bankruptcy law. M. Droz, in his *Etudes* (p. 464), says that the referendum weakens the character of the legislators, who do not always dare to defend before the people the measures they have voted for.

[3] The best collection of contemporary Swiss opinions may be found in Deploige, pp. 167–79.

practice, ever devised; while others decry the principle on the ground that the people are consulted about matters they cannot understand, and assert that the actual working of the system has been bad. But although opponents of the referendum are not wanting, no political party would now be seriously in favor of giving it up; not the Radicals, because they believe it to be a necessary feature of true democracy; nor the Conservatives, and still less the Clericals, because both these groups like to see a drag on hasty legislation. To some extent, however, the parties have changed their views, for men in active public life are naturally prone to judge any institution by its effects on their immediate plans, and as the referendum results in the defeat of a certain number of laws passed by the legislature, it is less satisfactory to the party in power than to their opponents. In a number of cantons, therefore, the minority, whether Radical or Ultramontane, demands an increase of direct popular legislation, which is refused by the majority. Now, in the Confederation the Radicals, who are the successors of the party that introduced the referendum, have long been the ruling element, and hence, while they cannot propose to do away with it, they are by no means anxious for its extension. In 1884, for example, after the people had voted down four laws at a stroke, the Right urged the adoption of a compulsory referendum for all federal statutes, but the Radicals opposed it on the ground that in the hands of the Clericals it would be an instrument for impeding progress.

The most valuable estimate of the referendum re-

cently published is that of M. Droz, the distinguished statesman and writer, whose service of almost a score of years on the Federal Council gives his opinion a peculiar authority.[1] M. Droz had at first a strong admiration for the referendum, but after a long experience of its actual working he became impressed with its defects and the abuse of which it is susceptible, and modified his views to some extent. He complains that it furnishes a basis for demagogy, and encourages the growth of professional politicians, whose ideas are systematically negative, and who are constantly trying to instill among others their own spirit of discontent. He remarks that the voter is often influenced by his humor at the moment, which is good if the crops have been satisfactory, and bad if something disagreeable has taken place in public life. On the whole, however, he concludes that the people have made a moderate use of their power, and that the federal referendum in its present optional form has done more good than harm.

Views of M. Droz.

If a stranger may venture to express an opinion, it would seem that the referendum deserves neither the extravagant eulogy nor the excessive condemnation that have been given to it. Like all human institutions, it is imperfect, but in the existing condition of the Swiss representative system, it seems to have supplied a real want, and so far as it has helped to soften the asperities of politics, to mitigate the strife of parties and of sects, it has done a very valuable service.

[1] *Etudes.* See the first, third, and the last two essays, written in 1882, 1885, 1894, and 1895.

While it has caused the defeat of a good many laws, it has not prevented rational progress, and, indeed, the conservative influence it has exerted, though in some cases unfortunate, does not appear to have been, on the whole, any greater than is desirable. It is useless in such a case to engage in what has been called hypothetics, or the science of those things that might have happened but never did, in order to discover what the condition of the country would have been without direct popular legislation. Switzerland is one of the most orderly and well governed of states, and to this result, which it has certainly not tended to prevent, the referendum may fairly be supposed to have contributed.

The initiative.

The referendum has a purely negative effect. It merely enables the people to reject measures passed by their representatives; but the Swiss feel that the legislature ought not to have the exclusive right to originate legislation, that democracy is not complete unless the people have also a right to enact laws directly, and the initiative is intended to supply this deficiency. It is a device by which a certain number of citizens can propose a law and require a popular vote upon it, in spite of the refusal of the legislature to adopt their views. And herein lies the difference between the initiative and the right of petition to which it has often been likened. A petition is merely a suggestion made to the legislature, which may act upon it or not as it sees fit, but the initiative takes effect without regard to the opinion of the legislature, and even against its wishes.

Although the initiative is a complement of the ref-

erendum, and a further extension of direct popular legislation, it was not always introduced subsequently or even simultaneously.[1] Thus it was adopted first by Vaud in 1845, and next by Aargau in 1852, although neither of these cantons then had any referendum for ordinary laws.[2] At that time, indeed, the new institution was treated as supplementary to the representative system, a method of preventing the legislature from neglecting the desires of the people, a sort of compulsory petition rather than a part of the machinery of direct popular legislation. The change in the mode of regarding it came when Rural Basle, in 1863, and Zurich, Thurgau, and Soleure, in 1869, coupled it with the obligatory referendum. From this time it began to spread, until now every canton but one[3] possesses it for revision of the constitution;[4] and all but three for ordinary laws.[5]

History of its adoption in the cantons.

[1] For the history of the initiative, see Keller, *Das Volksinitiativrecht*, and Curti, *Geschichte der Schweiz. Volksgesetzgebung.*

[2] Vaud adopted at this time a provision allowing the legislature to submit laws to the people if it saw fit. Thurgau, in 1849, and Schaffhausen, in 1852, adopted with the veto an initiative, but only for revision of the constitution. The statement in the text does not, of course, apply to the cantons with *Landsgemeinde*, or to the Grisons, the Valais, and Geneva, with their peculiar institutions.

[3] Geneva still retains the antiquated practice of submitting the question of revising the constitution to the people every fifteen years.

[4] In Schaffhausen it applies only to total revision. In the Valais the people decide whether the revision shall be total or partial. In all the rest of the cantons the petitioners can propose either one or the other as they choose. For a discussion of the constitutional initiative in the cantons, see Borgeaud, *Etablissement et Revision des Constitutions*, pt. iii. liv. iii. ch. iii. § i.

[5] These are Lucerne, Freiburg, and the Valais. In Rural Basle, it applies only to changes in the existing laws; while in St. Gall, on the other

The progress in the Confederation has been slower. The constitution drawn up by the Federal Assembly in 1872 provided, indeed, for an initiative on ordinary laws; but after the refusal of the people to ratify that instrument, the provision was dropped, and in the constitution of 1874, as in that of 1848, the initiative existed only for constitutional matters. The clause relating to the subject declared that on the demand of any fifty thousand voters the question whether the constitution ought to be revised should be submitted to the people, and that if the vote was affirmative the two councils should be reëlected for the purpose of preparing the revision.[1] This was somewhat ambiguous, and when in 1880 a demand was presented for an amendment giving to the Confederation a monopoly of the issue of bank-notes, the Federal Assembly decided that the provision applied only to the revision of the constitution as a whole, and submitted the question in that form to the people, who replied in the negative by a large majority.[2] Now it is evident that such a proposal is sure to provoke too much opposition to be of any use in getting a special amendment passed, and after a good deal of discussion an article, extending the initiative to particular amendments of the constitution, was adopted in 1891. In the Confederation, therefore, the initiative does not apply to ordinary laws, but can be

Its adoption in the Confederation.

hand, it cannot be used to repeal a law which has not been in force three years, or in the Grisons two years. The number of signatures required for the demand varies in the different cantons from 800 to 12,000.

[1] Art. 120.

[2] This decision is severely criticised by Borgeaud, pp. 371–75.

used to make changes of any kind in the constitution, — a curious inversion of the general principle that the latter ought to be treated as something peculiarly sacred, which is carefully guarded from sudden attack.

The method of operation.

The provisions of the federal constitution in regard to the initiative, although more elaborate than those to be found in most of the cantons, are typical of the method of procedure throughout Switzerland, and therefore merit a description in detail. Any fifty thousand voters can propose an amendment, which may either be expressed in general terms, or presented in a complete and final form. When the proposal is couched in general terms, the Assembly proceeds at once to draw up the amendment if it approves of it; if not, the question must first be submitted to the people whether such an amendment shall be made, and in case the popular vote is affirmative, the duty of putting the amendment into form is intrusted to the existing Assembly, although that body has already shown itself opposed to the measure.[1] The petitioners are not, however, obliged to rely on the fairness of the Assembly in carrying out their intention. They are at liberty to present their amendment, drawn up in final shape, and require that it shall be submitted directly to the people and the cantons for adoption. But in that case the Assembly can advise the rejection of the measure, or can prepare and submit to vote at the same time a distinct amendment as an alternative. In the cantons the method of procedure

[1] After the Assembly has put the amendment into shape, it must, of course, be submitted to the people and the cantons for ratification.

is not usually regulated so minutely, but it is in general very much the same, except that in most of them the presentation of a demand in the form of a completed draft, if not impliedly forbidden, is at least not expressly authorized.[1]

The actual working of the initiative in the Confederation.

The new procedure has already been used in the Confederation, but the results have not been such as to encourage much hope of its value in the future. The required number of citizens demanded in 1893 an amendment to the constitution forbidding the slaughter of animals by bleeding, and presented it in complete and final form. The chief object of the prohibition was not to prevent cruelty, although many of the voters were no doubt influenced by that consideration. The movement was really aimed at the Jews, whose religion prevents their eating meat killed in the ordinary way, and this motive was made evident by the fact that wherever the Jews had made considerable settlements, there was a majority in favor of the amendment.[2] The Federal Assembly urged the rejection of the measure, and in fact ordinances passed with the same object in a couple of the cantons had already been set aside by the Federal Council as inconsistent with the principles of religious liberty guaranteed by the national constitution.[3] But in spite of the advice of their representatives, a majority, both of the people and of the cantons, voted in favor of the amendment, thus placing Switzerland among the

[1] Keller, tit. ii. ch. vii.; Deploige, p. 127.

[2] *Bib. Univ.*, Sept., 1893, p. 661. Cf. Droz, *Etudes*, pp. 472–74.

[3] Droz, *Ib.*

nations that oppress the Jews, and this by a method of petty persecution, unworthy of an enlightened community. What will happen when a law is passed to carry out this constitutional provision still remains to be seen. That it will interfere with the habits of the farmer more than he expects, and will therefore be voted down, is not improbable. The absurdity of dealing with such a matter in the constitution at all is no doubt quite as clear to the men who advocated the new initiative as to the rest of the world, and yet it is the natural result of applying that institution to constitutional amendments, and not to ordinary laws.

As yet this is the only successful use of the federal initiative, but other attempts have been made. Emboldened by the results of the first experiment, the opponents of the government collected the required signatures for two more amendments. One of them, declaring that every man out of employment ought to be furnished with work by the state, was rejected without difficulty, because the Swiss do not like socialism of that kind. The other, which provided for a division of a large part of the federal customs duties among the cantons, and has been stigmatized as a miserable attack on the treasury, was also defeated by a large majority; but only after an immense effort, in which the President of the Confederation and all the other magistrates took part.[1]

The working of the initiative in Zurich.

The initiative has not been established in the Confederation a sufficient length of time to test its real importance, but it has not been found effective, even for ordinary laws, in the

[1] See Droz, *Etudes*, pp. 474–76; *Bib. Univ.*, Nov., 1894, pp. 431–32.

cantons where it has long existed.[1] This is shown by the experience of the great democratic canton of Zurich, where the referendum has certainly been no mere formality.[2] Here any five thousand voters can propose a law and require it to be submitted to the people, and any official or individual can do the same with the consent of one third of the cantonal council. The second form of the initiative, that is, a petition supported by one third of the cantonal council, can be neglected for our purposes, for up to 1893 no law had ever been enacted in that way.[3] But from 1869, when the initiative was established through August,

[1] In the cantons with the Landsgemeinde, one or more voters, after proper notice to the authorities, can, as we have seen, bring before the assembled people any matters they please; but this is a case where every man is a member of the legislature rather than one where the people can make laws directly without the help of any assembly at all. The whole process is, in fact, so different from the initiative, that it throws no light on the working of that institution.

In regard to the German cantons without the Landsgemeinde, the writer has not been able to get statistics of any value except in the case of Zurich. In Aargau, however, the initiative seems to have been little used. (Deploige, p. 125, note.) Berne adopted it in 1893, and has used it once; St. Gall in 1890, and through 1894 had not used it all. Neuchâtel used it with success in 1884 to cause the state to buy up a small private railroad, and in 1888 to forbid any cantonal official to hold at the same time the position of national councillor. In Vaud it has not been put in operation since 1883, when it was likewise successfully used to prevent any cantonal officer from being a member of the Federal Assembly. (Deploige, p. 164.)

[2] Cf. Stüssi, *Zürich*, pp. 58–75, and the tables at the end of both his pamphlets.

[3] In 1883 a bill that came before the people in this way was rejected. In 1871 two measures proposed by individuals were ratified by popular vote, but as they were adopted by a majority of the council, they are very properly classed by Stüssi as simple petitions.

1893, twenty-one measures had been proposed by five thousand voters. Four of them were approved by a majority of the council, and of these two were accepted by the people and two rejected; in two other cases the council prepared a substitute or alternative which was ratified, while of the remaining fifteen proposals, which were disapproved by the council, only three were adopted by the people. Of these three, one established houses of correction for tramps, a measure the wisdom of which was much doubted. Another reestablished the death penalty, which had previously been abolished; but the people shortly afterwards rejected the statute which provided for carrying it into effect, and the matter was thereupon dropped. The third abolished compulsory vaccination.[1] The net direct result of the initiative in Zurich during twenty-four years has been, therefore, the enactment of only three laws to which the legislature was opposed, and of these one was of doubtful value, about another the people seem to have changed their minds, and in the opinion of most educated people the third was clearly bad. It is of course possible that the right on the part of individuals to insist on a popular vote may have induced the council to pass some measures it would otherwise have rejected; but the large proportion of petitions which it refused to adopt makes it probable that such a motive has had very little effect.

[1] The initiative for ordinary laws was adopted in Berne in 1893, and the only use to which it has been put as yet is that of abolishing compulsory vaccination.

Criticism of the initiative.

The new federal initiative has been very severely criticised, although chiefly in regard to the right of presenting the amendment as a completed draft. This matter was, indeed, hotly debated when the new procedure was adopted.[1] The Federal Council, in its report to the Assembly in 1890, recommended the extension of the initiative to particular amendments of the constitution, but only by means of a demand expressed in general terms; and in this form the proposal passed the National Council. The Council of States, however, added the provision allowing the petitioners to present an amendment fully drawn up, and require an immediate popular vote upon it. When this came back to the National Council the Radicals, who are the ruling party in Switzerland, fearing that such a procedure might be used as an instrument for passing reactionary measures, clung to the original project; but the Catholic Right on one side, and the Democrats and Socialists on the other, glad of an opportunity of reaching the people over the head of the Assembly, were in favor of the change, and succeeded in carrying with them enough members from the extreme wings of the former majority to pass the bill as it came from the Council of States. The position of the parties was the same at the popular vote. The Radical journals all opposed the measure, and the few cantons that voted against it were all noted for their radical tendencies, while the majorities in its favor were largest in the Catholic or reactionary parts of the coun-

[1] For the history of the adoption of the new federal initiative, see Borgeaud, pt. iii. liv. iii. ch. iv. § 4; and Deploige, pp. 75–78.

try.[1] In short, it was carried against the ruling party, which in spite of its name is moderate, by extremists who are more or less out of sympathy with the government.

The attitude of the parties was, of course, due mainly to the effect which the right to present a measure finally drawn up was expected to have on the position of the Assembly. It may be noticed that this form of initiative is strongly advocated by the believers in direct popular legislation, on the ground that it embodies the most complete realization of their ideas. Under it the chambers play no part, except to advise the acceptance or rejection of a law as a whole, and if the system were to prove entirely successful, so as to replace the customary method of legislation, it might be possible to do away with representative chambers altogether. For that very reason the form of the completed draft is disliked by men who have confidence in the existing elected assemblies, and by those who think that every law before being enacted ought to be carefully prepared by responsible bodies, and publicly debated with an opportunity for amendment. It may be doubted, however, whether for constitutional amendments, which are usually short and somewhat general in their terms, the difference between the two methods of procedure is so important as is commonly supposed; whether the evils that are predicted from one method

[1] The figures are given in the *Bib. Univ.*, Aug., 1891, p. 434. The cantons voting No were Aargau, Thurgau, Vaud, Rural Basle, Appenzell-Ext., and Schaffhausen. There were also heavy minorities against it in Zurich, Berne, and St. Gall.

would not be realized under the other also.[1] In the case of the recent prohibition of the slaughter of animals by bleeding, for example, it is hard to see why the petitioners could not have accomplished their object equally well by either process, unless, indeed, the Assembly in drawing up the amendment should deliberately try to defeat their intention, which the opponents of the procedure by completed draft assert that it can be trusted not to do. But however this may be, it is certain that the new federal initiative in its actual form has been the cause of great anxiety. M. Droz declares that such a feeling is widespread, and he points out that whereas a democracy ought to rest on a secure foundation, the present system puts the constitution in question at every moment.[2] He speaks of it as the beginning of a period of demagogy, in which self-appointed committees have as much importance as the regular government, and says that it is a continual peril to the quiet and prosperity of the country, and is destined to accomplish a work of disintegration and destruction. These fears are, perhaps, a little exaggerated; for although on occasions of popular excitement the initiative is liable to be used recklessly, and is therefore a real source of danger to the country, yet to judge from the experience of Zurich it is not likely to be put in operation with

[1] Borgeaud (pp. 341–45, 384–400) maintains that where the demand is presented in general terms the initiative is really exercised by the people as a whole, and that where it takes the form of a completed draft the initiative proceeds from individuals; but this distinction seems a trifle artificial. The first of these methods involves, however, a second popular vote, which is in itself a safeguard.

[2] See the last two chapters of his *Etudes*.

success often enough to produce any marked influence on the politics of the Confederation in ordinary times.[1] A new toy is a delight to a people as well as to a child, and the frequent use of the initiative during the first two or three years of its existence is not a sufficient reason for assuming that it will continue to be used to the same extent in the future.

The initiative not likely to be of real value.

The idea of the right of everybody to take part in public affairs by proposing laws for the good of the country has something very attractive about it, but in practice it has not proved of value. Whether the referendum has, on the whole, been a benefit to Switzerland or not, it has certainly been a success in the sense that it has produced the result for which it was established. It seems, on the whole, to have brought out the real opinion of the people in regard to the laws submitted to them for ratification. But this cannot be said of the initiative. It would be absurd to suppose that the political longings of the citizens of Zurich are summed up in the three measures to which this institution has given birth in their canton; and it would be an insult to the Swiss to assert that they desired above all other things a petty persecution of the Jews. We are forced to conclude, therefore, either that the wants of the people are, on the whole, well satisfied by the action of the legislature, and if so the initiative is needless; or that it has not enabled them to express their real wishes, in

[1] It may be observed that in Zurich the form of the completed draft is allowed, and has been used about half the time. Stüssi, *Zürich*, pp. 63–64.

which case it is a failure. The advocates of the initiative in Switzerland admit that it has not yet developed much efficiency, but they hope for better results hereafter. The experience of the past, however, does not lead us to believe that it will play any great part among the institutions of the future. It applies only to questions which the representatives of the people, who are quite sensitive to public opinion, refuse to pass, and it leaves no room for debate, or for compromise and mutual concession, at least when used in the form of the completed draft. Hence the chance of enacting a law by this process is very small. The conception is bold, but it is not likely to be of any great use to mankind; if, indeed, it does not prove to be merely a happy hunting-ground for extremists and fanatics.

Possible application of the referendum in America.

After studying any successful institution in a foreign land, one is always moved to ask how it would work in his own country; whether it could be grafted into the native stock and made to thrive equally well there. Could we adopt the referendum in America? Would it produce the same fruits here as in Switzerland? Is it consistent with our political system? There has been a great deal of discussion of late upon this subject. More accurately stated, however, the question is not whether we shall adopt the referendum, but whether we shall adopt it in the Swiss form; for the institution already exists here, and having developed spontaneously has probably assumed the form best suited to the nature of our government.

Before discussing, therefore, an extension of the

referendum in this country, we must know how far it is already in use.[1] In the first place it applies almost universally to changes in a constitution. Now there is a tendency, especially in the newer western states, to make the constitutions more and more elaborate and inclusive, so that they cover a great deal of the ground formerly within the province of the legislature, and the result is that the range of subjects controlled by direct popular vote has been very much enlarged. This tendency has, perhaps, been carried too far; for, as Mr. Oberholzer remarks in his excellent book on "The Referendum in America," "If a constitution is to enter into the details of government, and trespass on those fields of action before reserved to the legislature, it cannot have the character of permanence which it had when it was only an outline to direct the legislature. It must change as laws change, and laws must change as the needs of the people change." But while the increasing scope of the constitutions may render them less immutable, it does not tend to obliterate the distinction between constitutional and other laws.

Its present use.

Constitutional questions.

The sanction of a popular vote has, in the second place, been required in many of the states for other things than constitutional amendments; but if we leave out local affairs, we shall find that almost all the matters so treated are closely akin to constitutional questions, and are of such a nature that, except for some obvious motive of necessity or convenience, they would be regulated by the constitu-

Kindred subjects.

[1] Cf. Oberholzer, *The Referendum in America*, ch. iii. and appendix.

tion itself. The power of the legislature to contract debts, for example, is often limited, with a proviso that any excess above the limit must be approved by the people. The object of this is clear. The debt limit cannot be absolutely rigid, because occasions when it must be exceeded are sure to arise, and it would be somewhat absurd to prescribe a limit in the constitution, and require a formal amendment for the temporary purpose of sanctioning an exception to the general rule. A similar procedure is established in some states for the alienation of public property; for exceeding a certain tax rate; and even for the expenditure of money for a specified purpose or above a fixed amount. All these cases depend upon the same principle, that of providing a convenient way of making the necessary exceptions to a rule laid down in the constitution. Another provision, to be found in all the new states and in some of the old ones, declares that the capital shall be selected by a vote of the people, and shall not be changed without their consent. Now, as the seat of government is, naturally and properly, fixed by the constitution itself, such a provision merely establishes an informal method of completing or amending that instrument.[1] The same thing is even more evidently true of provisions authorizing the legislature to submit to the people the question of woman suffrage, of the method of choosing representatives, or of the election of judges.

[1] In some cases this has been applied to the location of universities and other state institutions. A popular vote is sometimes required also for changing the boundaries of a state.

These examples substantially include all the cases where the constitutions allow measures to be submitted to the people of the state, with one notable exception.[1] After the banking mania of 1848, several western states adopted a provision requiring a popular vote upon every act creating banks. This provision differs materially from all the others we have considered, and comes far nearer to the Swiss referendum. The subject is clearly not within the domain of constitutional law; and instead of involving a simple question about which the mass of people can easily form an opinion, it presents to them a complex piece of legislation, whose details cannot be understood without a great deal of study. It was a specific remedy for a particular social disease, and has scarcely been adopted at all outside of the states which suffered at that time,—a fact which seems to prove that it is not in accord with our institutions.

Banking acts.

There remains to be considered the use of the popular vote for local questions. This depends upon quite a different principle. The referendum means an appeal from the legislature to the whole body of constituents who elected the representatives; but in the practice of leaving local affairs to be decided by the voters of the city, town, or county there is no appeal of this kind. The people of the state, in such a case, are not asked to ratify the act of

Local matters.

[1] Legislatures have occasionally submitted statutes to popular vote without express authority in the constitution, but the weight of opinion is against the constitutionality of such a proceeding, on the ground that it is a delegation of power. (Oberholzer, ch. v.; and see the Opinions of the Justices, 160 Mass. Rep. 586.)

the legislature, nor can they veto it; for although the vast majority may be strongly opposed to a local option bill, for example, they cannot prevent its becoming a law. The statute acquires a complete validity from the enactment by the legislature, and the only question on which a popular vote is taken is that of the local application of its provisions. With this the people of the state, as a whole, have nothing to do, for it is decided in each particular town solely by the voters of that town. Local popular voting is in reality only a method of local self-government, whereby additional powers are given to the city, town, or county, and their exercise is intrusted to the whole body of inhabitants.

It may be stated, therefore, that, except for the anomalous case of the banking acts, the referendum in the United States has been almost entirely confined to constitutional matters, and to kindred subjects which are carefully specified, and are of such a nature that the question submitted to the people is extremely simple. It may be observed, moreover, that the popular vote is always obligatory, that is, it never depends upon a request on the part of the citizens. Now all this is very important because, if the referendum ought to be extended, it would presumably be wise to follow the lines along which it has developed naturally.

Objections to a general referendum in America.

There are, indeed, a number of grave objections to the introduction in America of a general referendum on all laws. Our whole political system rests on the distinction between constitutional and other laws. The former are the solemn principles laid down by the people in its ultimate sov-

ereignty; the latter are regulations made by its representatives within the limits of their authority, and the courts can hold unauthorized and void any act which exceeds those limits. The courts can do this because they are maintaining against the legislature the fundamental principles which the people themselves have determined to support, and they can do it only so long as the people feel that the constitution is something more sacred and enduring than ordinary laws, something that derives its force from a higher authority. Now, if all laws received their sanction from a direct popular vote, this distinction would disappear. There would cease to be any reason for considering one law more sacred than another, and hence our courts would soon lose their power to pass upon the constitutionality of statutes. The courts have in general no such power in Switzerland, where indeed the distinction between constitutional and other laws is not so clearly marked as in America. With the destruction of this keystone of our government the checks and balances of our system would crumble, and the spirit of our institutions would be radically changed. The referendum as applied to ordinary statutes is, therefore, inconsistent with our polity, and could not be engrafted upon it without altering its very nature.

Need of keeping constitutional and other laws distinct.

Another objection to a general extension of the referendum here arises from our habits and traditions. Except for the broad and simple questions involved in constitutional matters, the experience of our people has been confined to pass-

Alien to our habits of thought.

ing judgment on men and on general lines of policy. They have not been in the habit of considering the wisdom of particular statutes, or determining the need for the various appropriations. Nor would it be possible for them to do so. In a community as complex as ours, legislation is a very intricate matter, and requires a great deal of careful study. This is far less true in Switzerland, where the cantons are minute compared with our states, and where the variety of social, commercial, and industrial interests is much smaller. Hence the referendum in America would impose on the voters a far more difficult task than it does in Switzerland.

Quantity of laws enacted.

This consideration brings us to the practical question of the form in which the referendum could be used here. In no Swiss canton does the number of laws presented to the people average ten a year, and in most places there are only half that number, even where the referendum exists in the obligatory form. But in the American states the acts passed in a single year are far too numerous to permit the people to consider them independently or vote intelligently upon them. They often run up into the hundreds, and fill a volume so large that the voter would hardly have time to read it through if he sacrificed all his leisure for the purpose. No doubt the quantity of our legislation is excessive, but even if it were very materially reduced, a general referendum in the obligatory form would still be out of the question. There remains the optional form; but this the Swiss themselves do not like so well, because the agitation involved in the effort to collect the necessary signatures

has a tendency to inflame political prejudices, and thus prevent a true expression of public opinion. In America this form is open to peculiar objections, owing to the large size of the states, and the great development of political parties. It would probably be used chiefly in the case of laws that had aroused a good deal of party feeling and had been carried as party measures. In such cases the signatures could easily be collected by means of the party machinery, without which the task would be difficult. It is likely, therefore, that the referendum in this form would be used mainly as a means of annoying the party in power by delaying legislation, and would become a party weapon. Viewed in this light, it is hardly to be desired.

Moreover, there is not the same need of a referendum here that there is in Switzerland. The Swiss have no executive veto, as a rule no judicial process for setting aside unconstitutional laws, and in the cantons only a single legislative chamber. Hence they are much more exposed to the danger of hasty law-making, and have a greater need of a veto in the hands of the people.

Objections do not apply to local popular voting.

It is perhaps needless to remark that none of these considerations apply to the use of local popular voting as a means of municipal government.[1] Such a system does not tend to obscure the distinction between constitutional and other laws. It brings before the people questions which, if

[1] While the power of the legislature to submit laws to a popular vote of the whole state, without constitutional authority, has been generally denied by the courts, the weight of opinion is decidedly in favor of its right to make the local application of laws depend upon a local popular vote, at least in the case of laws that have a peculiar local interest.

sometimes intricate, are at least comparatively familiar, and it does not present such a quantity of subjects that they cannot be considered separately. In fact, as an extension of the principle of the town-meeting to larger communities, and as a method of educating the voters and increasing their interest in local government, the system seems to offer a possible remedy for the sad condition of our great cities.[1]

Even if space permitted, it would hardly seem necessary to discuss the adoption of the initiative at any great length. With regard to the referendum, the question is whether an institution that has proved of value in its home can be profitably introduced here; but the initiative has not been a success even in Switzerland, and there is no reason to suppose it would work any better elsewhere. Surely we do not suffer so much from sterility in legislation as to make us anxious to add another process for manufacturing laws, without proof that the laws it produces are wise, just, and statesmanlike.

[1] The theory that municipal government ought to be organized on the same principles that apply to the state, with a careful separation and balance of powers, has been a bugbear in America. The functions of a city are, in the main, of an executive character. Its legislative powers are mostly subsidiary and unimportant, and although by a confusion of ideas it has been allowed in many states to elect local judges, it can hardly be said to exercise the judicial prerogative. Hence the objections to a concentration of authority in the hands of the people or its representatives, which are extremely important in the case of the state as a whole, do not apply to the cities.

CHAPTER XIII.

SWITZERLAND: PARTIES.

THE political history of the present Confederation begins with the overthrow of the Sonderbund and the adoption of the constitution of 1848. At this time power fell naturally into the hands of the victorious leaders in the civil war, and the first members of the Federal Council were selected from their ranks. But the constitution had no sooner been adopted than they began to be sharply divided among themselves on the position to be taken by Switzerland in regard to the revolutionary movements in other lands. The larger number of them wanted, by maintaining a strict neutrality, to avoid the danger of being drawn into a war, while the men of more radical views were anxious to take an active part in the Italian struggle for liberty. A great many of the latter, indeed, crossed the mountains to fight as volunteers, and although the moderate party was strong enough to pass a vote forbidding the enlistment of soldiers on Swiss soil, it did not dare to enforce the prohibition. With the suppression of the insurrections in the neighboring countries, the question became even more acute, for refugees crowded over the frontier from Lombardy and Baden, and when the Federal Council determined to expel some of the most restless of these men, a fierce

The history of parties since 1848.

The question of the refugees, 1848-50;

though fruitless effort was made in the Assembly to reverse its acts.

and the military capitulations.

Another matter on which the parties took opposite sides was that of the military capitulations. For centuries it had been the habit of the Swiss to serve as mercenaries in foreign states, and as late as 1848 several cantons had contracts for supplying troops to the King of Naples and to the Holy See. Now the constitution that had just been adopted forbade any future treaties of this kind; but the Radicals, who were guided by their own sense of right rather than by the terms of the constitution, horrified at the thought of Swiss citizens serving as instruments to put down freedom, wanted to prevent all recruiting for such a purpose. The Moderates, on the other hand, were strict constructionists, and maintained that the Confederation could not interfere with the existing capitulations. The Assembly in a spirit of compromise voted to negotiate for the abrogation of the treaties. The negotiations came to nothing, but with the ending of the revolutionary movements the interest both in this question and in that of the refugees began to wane, and thus the restoration of order in Europe removed the cause of political division in Switzerland. The parties themselves soon lost their momentum, and their differences finally vanished altogether at the time of the trouble with Prussia over Neuchâtel in 1856, when the Swiss were almost unanimous in supporting the vigorous action of the Federal Council. Party feeling, however, had run so high that in 1854 Ochsenbein, one of the most prominent of the Mod-

erates, failed of reëlection to the Federal Council, and was replaced by Stämpfli, the leader of the Radicals.

The first issue had hardly died away when others arose. The former parties had been really national; for, although the opponents of strict neutrality were particularly strong among the French and Italians, the members of both parties were scattered very generally all over the country. But the new issues, while in no sense based on race, were largely sectional, the different parts of Switzerland, and even the different cantons, being often found almost solidly on one side or the other. The divisions and cross-divisions were, however, exceedingly complex, and it is almost impossible to describe them clearly. They were, in fact, so indefinite that the parties did not even have names, and apart from the leaders it was not always easy to say to what group a man belonged.[1] The primary source of division was the railroad question, which may be traced back as far as 1852, when a sharp contest took place in the Assembly between the advocates of state and private ownership. The latter prevailed, and within a few years a road, called the *Thallinie*, ran through Switzerland from the Lake of Constance to the Lake of Geneva. But this was no sooner built than it became an apple of discord. An attempt was made to create rival lines, and the

The railroad question, 1852–64.

[1] At all times there have been subjects about which people have not divided in the ordinary way, which have not, in short, been treated as party questions. Thus, in 1854, the proposal to create a national university was defeated by the opposition of the French and Italians, who feared an increase in German influence, and of the Ultramontanes, who dreaded the power of the Protestants.

Assembly became a field for battles between the opponents of monopoly and the partisans of the Thallinie; the latter, with their friends the manufacturers of Zurich, being nicknamed railroad barons and cotton lords. The agitation spread from the chamber to the people. In 1858 a society called the Helvetia was formed for the purpose of curtailing the power of the railroad companies. It had no systematic organization, but exerted a great deal of influence for a number of years; and in fact the enemies of the Thallinie were so far successful that a couple of rival lines were actually built. The grouping of parties was further complicated by the plans for a railroad over the Alps. The eastern part of the country wanted a tunnel at the Lukmanier or the Splugen, while the west wanted it at the Simplon, and the centre at the St. Gothard. In some mysterious manner, the interests of the Thallinie became identified with the last of these; but the question remained unsettled until, by the building of a railroad from Lucerne to Zurich, in 1863, and the prospect of one to Berne, a majority was won for the St. Gothard. The extensive development of railroads and the definite selection of the route over the St. Gothard, whose construction was finally assured by the promise of subventions from North Germany, Baden, and Italy, brought to an end the second great issue in Swiss politics.

The question of Savoy.

With the question of the railroads had been interwoven another, with which it seems at first sight to have no connection. The neutrality of the northern part of Savoy was guaranteed by the

Treaty of Vienna, and in fact the provinces of Chablais and Fausigny had been ceded by Switzerland to Sardinia on the express condition that they should never be transferred to any other power. The Swiss, therefore, protested loudly when they heard that Napoleon III. was about to take this district as a part of the fee for his services in driving the Austrians out of Lombardy in 1859. But protests were of no avail, and it was not clear what could be done. Many people wanted to maintain the rights of Switzerland at all hazards, while others dreaded the danger of a war with France. The Federal Council itself was divided. Strangely enough, the lines of cleavage on this question were nearly the same as on that of the railroads, for most of the deputies from the cantons where the railroads exerted great influence, such as Zurich, Thurgau, Vaud, and the city of Basle, belonged to the Party of Peace; and, on the other hand, the Party of Action was supported by the anti-monopolists, and contained the leading men from Berne, Geneva, and Soleure. The struggle was bitter, and threatened to renew the ancient antagonism between Berne and Zurich; but the men who had not joined either side brought about a compromise whereby the Assembly approved of the previous action of the Federal Council, and requested it to protect the interests of the country while maintaining for the present the *status quo*. This was really a victory for the Party of Peace, because the retention of the provinces by France was not followed by a threat of war, the Federal Council merely appealing to the Great Powers, which did not care enough about

the matter to interfere, or even to hold a conference. Thus Switzerland virtually acquiesced in the cession of Savoy, and the question disappeared from the field of active politics.

The question of revision, 1864–74.

Again a new issue followed close on the heels of the last, causing once more a different grouping of parties. The struggle over the railroads and Savoy had no sooner subsided than the question of revising the federal constitution came up. Although the powers of the Confederation undoubtedly needed to be enlarged, the immediate occasion for the change was presented almost by accident. In 1864 a treaty was made with France, which gave to all citizens of that country, without regard to creed, the privilege of settling in Switzerland. Now the federal constitution guaranteed a free right of settlement only to Swiss Christians, and several of the cantons refused to repeal their laws excluding Jews. That the French Jews should enjoy a right denied to natives of the same religion was, of course, intolerable, and the Federal Council proposed a revision of the article of the constitution bearing on this point, and took advantage of the opportunity thus afforded to suggest a number of other amendments also. When these came before the people in 1866, public opinion was chaotic. The amendments were opposed both by men who thought they went too far, and by those who thought they did not go far enough, while the remains of the feelings engendered by the railroad struggle helped to confuse the issue. All the amendments except the one relating to the Jews were rejected; but the desire for revision

grew stronger than ever, and parties began to form solely with regard to that question. A few years later the Assembly returned to the matter and drew up a constitution more centralized and more democratic than the one that is in force to-day. This time the issue was clear, and all the men of radical views urged the people to ratify the new constitution, their opponents consisting of the ultramontane Catholics, the believers in cantonal rights, and the French and Italians, who saw in centralization an attempt to bring them under the control of the Germans. For the first time in Swiss history, party lines were determined by race, and as the adoption of this constitution might have perpetuated such a state of things, its rejection at the polls in 1872 may be considered fortunate. The draft was then modified, the objections of the French cantons were removed or overcome, and in this form it was adopted in 1874. The struggle over revision had raised party spirit to such a pitch as to cause the displacement of two federal councillors. One of them, Jacob Dubs, resigned in 1872 as a protest against the new constitution, which had been drawn up by the Assembly,[1] and of which he disapproved; while the other, Challet-Venel, was refused a reëlection by the majority of the Assembly because he had opposed revision.[2]

Since 1874 the course of politics has been smoother, and the condition of the parties has been far more steady. The most important source of division has been religion, for in Switzerland, as in other countries,

[1] Müller, *Pol. Geschichte der Gegenwart*, 1872, p. 303.

[2] Cf. Droz, *Etudes*, p. 359.

the dogma of Papal Infallibility was followed by a conflict with the Catholic church. Although by no means violent among the Swiss, it was sharp enough to consolidate the Ultramontanes or Clericals into a united group, commonly known as the Right. This body, which draws its members mainly from the cantons where the Catholic majority is overwhelming, is the most ardent, the most compact, and the best organized of the parties. It is, in fact, the only one that has real cohesion, and yet it is divided into two sections, one of which, led by the deputies from Lucerne, represents the views of laymen and is moderate, while the other, whose leaders come from Freiburg, is more extreme.[1]

History of parties since 1874.

The Right.

At the opposite end of the political scale have stood since 1874 the Radicals or Left, who look on the Catholic church and the Orthodox Protestant clergy as the great obstacles to progress. This group is held together even less firmly than the Right. The bulk of the party belongs to the section of the older Radicals, who, in spite of their name, have ceased to be very radical, and are, moreover, divided among themselves by the trend of opinion in the different races. The German members are at the same time more socialistic, and more anxious to increase the powers of the federal government, while the French have less faith in state providence, and, fearing that an extension of the authority of the Confederation will involve the

The Left.

[1] See, on the present condition of parties, Adams, ch. vii.; Sentupéry, *L'Europe Politique*, vol. ii. pp. 1200–5.

supremacy of the more numerous Teutonic element, are inclined to uphold cantonal rights. Thus it happens that the French, who permit in their cantons far less local self-government than the Germans, have a tendency to resist centralization in national matters. Of late years they are said to have acquired more confidence in the government at Berne, and to be less strenuously opposed to an increase of its powers. From a purely political point of view this is perhaps true, but on the other hand the difference of opinion between the French and German Radicals on the subject of state interference seems to be more marked than ever.[1] Beyond this section the Radicals shade off into Democrats, who are more strongly in favor of socialistic legislation; and still further to the Left are the men who openly call themselves Socialists, but these have scarcely any members in the Assembly, and are not very numerous in the country at large. With a growth in their numbers, the divisions of the Radicals have become more pronounced, and, in spite of great efforts to maintain concord, it is not improbable that the party will break in pieces.[2] In fact, it has already cut loose from the Socialists that hung on its skirts.[3]

The Centre.

The Centre, which stands between the Right and the Left, has the least cohesion of all the parties. Its members, who are also known as Liberal Conservatives, represent in a peculiar degree the old

[1] Cf. Droz, "Etatism et Libéralism," *Bib. Univ.*, Dec., 1895, p. 449.

[2] Cf. Dupriez, vol. ii. p. 212; *Bib. Univ.*, May and June, 1895, pp. 433–34, 662–64.

[3] Cf. *Bib. Univ.*, April, 1894, pp. 211–12.

liberal traditions, and maintain the principles of personal freedom against the tendency toward paternal government. They may be regarded as the successors of the railroad and cotton barons, and are largely recruited from the conservative Protestants, many of them being bankers, manufacturers, or other men of substance. They devote their attention chiefly to economic questions, assuming for the rest a conciliatory attitude; and although for a long time they have not held a fifth of the seats in the Assembly, yet, owing to the fact that until recently they still had several members in the Federal Council, they exerted an influence out of proportion to their numbers.

Continuity of the parties since 1874.

These three parties are the only ones that have existed since 1874, and they have had a continuous life, for the questions that have arisen from time to time have not had the effect of creating new groups, or even causing any great changes in the size of the existing ones. At first none of the three had a majority of the Assembly, and the Centre held the balance of power; but the Radicals increased at its expense, until after a few years they had a decided majority both in the National Council and in the Federal Assembly. Except for the gradual gain of seats by the Left, the strength of the three parties has not varied a great deal, and in fact political conflicts have been decidedly less violent than formerly.

If now we compare the periods before and after 1874, we observe that they are alike in the absence of sudden party fluctuations. We do not, as in other democracies, see one side after the other sweep the

country and get control of the government, but the relative strength of the different groups is constant or changes slowly. Even during the former period the balance of force in any one set of groups was pretty well maintained, until a new question destroyed them altogether by creating entirely different lines of cleavage. On the other hand, the second of these periods differs from the first by the fact that the parties have not dissolved to be replaced by others based on new issues. During the years from 1848 to 1874 this happened three times, but since the adoption of the present constitution each problem that presented itself has been dealt with by the existing parties without materially affecting their composition. The second period is also distinguished by a greater moderation, which has resulted in the reëlection since 1874 of every member of the Federal Council who was willing to serve. To such a point, indeed, has this been carried that the Centre was allowed to retain more than half the seats in that body for many years after it had become a small minority in the Assembly.

Comparison of the periods before and after 1874.

Although parties have never ceased to exist in Switzerland, the government of the Confederation, unlike that of every other democracy, is not in any true sense a government by party. This is eminently true of the executive; for, as we have already seen, the minority is represented both in the Federal Council and in the executive bodies of almost all the cantons, and is thus enabled to exert a direct influence on the conduct of public affairs. A thor-

Relation of the parties to the government.

oughly partisan administration is therefore out of the question. The same absence of strict party control is true of the legislature also, though not quite to the same extent. All the groups in the Federal Assembly are, indeed, in the habit of holding meetings to decide whether the members shall act together on some question pending in the chamber, or be free to vote as they think best. This practice seems to be always followed by the Clericals, and it is not uncommon with the Radicals, who do not, however, feel bound to obey the decision of the majority even on the most important matters. But in fact party lines are rarely drawn, except on measures that have an immediate bearing on party interests or on religion;[1] and on these the Conservatives, although conciliatory in tone, usually vote with the Radicals, because the Clericals are thought to be unreasonable. On other matters the Centre and the moderate parts of the Right and Left, who enjoy the confidence of the Federal Council, tend to draw together, while the extremists of both sides, having little influence with the government, try to work directly on the people.[2] The absence of a sharp division of the chamber into hostile factions is reflected in the method of distributing the seats, for the members of a group do not all sit together as in other parliaments, but the deputies sit, as a rule, by cantons, a new member usually occupying the place left vacant by his predecessor.

Another peculiarity of political life in Switzerland is

[1] Cf. Dupriez, vol. ii. pp. 214–15.

[2] Adams, p. 105.

the absence of party machinery. The parties are collections of individuals who look at public matters from the same standpoint, rather than political organizations; and in fact the Swiss have carried out more fully than any other people Röhmer's theory of the strictly psychological basis of party division.[1] There are in the Confederation no national committees, no elaborate systems of primary caucuses and general conventions. The Clericals and Radicals do occasionally hold congresses, but these are simply intended to prevent disruption by discussing the questions of the day, and thus preserving a certain harmony of views, and they take no part in the nomination of candidates for office. A few political associations exist also, of which the most famous is the *Grütliverein*, composed of workingmen, and advocating advanced opinions. But although these societies sometimes exert a good deal of influence at elections, and more still at federal referenda, they rarely try to run candidates of their own and are not really party organizations. They correspond, in fact, more nearly to our reform clubs, temperance associations, and labor organizations, than to our political parties. The candidates for the National Council are, indeed, nominated by political meetings held in the several districts; but an inspection of the results of the votes shows that the name of a man who is highly respected, or who has done valuable service, is often put on all the tickets irrespective of party, and that in close districts it is not

Absence of party machinery.

[1] *Lehre von den Politischen Parteien.* Cf. Blüntschli, *Charakter und Geist der Politischen Parteien.*

uncommon to agree on a ticket which includes men from different groups.[1] Moreover, there is among the Swiss very little struggle for office, and there seems to be no special class of politicians, no men who make a business of arranging nominations and managing campaigns. Nor is there much excitement about elections, which are not an occasion for processions, badges, and other devices for rallying the lukewarm and stimulating the enthusiasm of the faithful.[2]

Absence of national party leaders.

Not only are national conventions for the nomination of candidates unknown, but there may almost be said to be no national party leaders. This is due in part at least to the fact that political strife is so much hotter in cantonal than in federal matters that the parties are divided on local rather than on national issues; or perhaps it would be more accurate to say that the federal representatives are chosen by the cantonal parties.[3] Hence the influence of the leaders is exerted chiefly in their own cantons, and their power is local rather than national.

Stability of parties.

The most remarkable peculiarity of the Swiss parties is their extreme stability. We have already seen that since 1874 there have been no sudden variations in the strength of the different groups, the only important change being the gain of seats by the Left, which has been decidedly slow and gradual. How far this is true may be gathered from the

[1] See, for example, the results of the election of 1887, in the *Zeitschrift für Schweiz. Statistik*, 1887, p. 414 *et seq.*

[2] Winchester, pp. 81–82.

[3] Cf. Dupriez, vol. ii. p. 214; Marsauche, p. 208; Winchester, p. 146.

following comparison of the returns in the last six general elections to the National Council : [1] —

	1878.	1881.	1884.	1887.	1890.	1893.
Democrats .					6	8
Left . . .	69	83	88	87	83	86
Centre . .	31	26	22	24	22	27
Right . . .	35	36	35	34	35	25

In many of the districts, the certainty of the result prevents the nomination of opposition candidates altogether. In 1887, for example, the election in twenty-three districts, choosing fifty-two deputies, was uncontested, and only in nine districts, with twenty-eight deputies, were there twice as many candidates as seats to be filled. The remaining districts had ninety-five candidates for sixty-five seats, so that the whole number of candidates was two hundred and three. In other words, only fifty-eight seats out of one hundred and forty-five, or just forty per cent., were contested; and in five of these cases the contest was between men of the same party.[2]

[1] As there are no systematic party organizations, and as party lines are not distinctly drawn, it is not easy to classify the deputies. The figures for 1881, 1884, and 1887, in this table, are taken from the *Zeitschrift für Schweiz. Statistik*, 1882, p. 70 *et seq.*, 1887, p. 414 *et seq.*, and for the first and the last two years from Sentupéry, *L'Europe Politique*, vol. ii. p. 1200. The last column, however, does not strictly give the result of the election of 1893, but the condition in 1895. Sentupéry gives the composition of the Council of States during the same period as follows : —

	1878.	1881.	1884.	1887.	1890.	1893.
Left . . .	22	21	20	18	20	21
Centre . .	5	5	6	8	6	8
Right . . .	17	18	18	18	18	15

[2] These figures take no account of candidates who polled less than ten per cent. of the vote. In 1881 eighty-six seats were contested, and in

The same stability of parties is observable in local matters. For some years after the war of the Sonderbund and the movements of 1848, several of the cantons were in a condition of great disturbance. Political passion ran high, and at times there were outbreaks of violence.[1] But this has passed away nearly everywhere, and in most of the cantons the proportions of the parties have varied little of late years, so that for long periods the majority belongs to the same party, and a continuous policy, liberal or conservative, is pursued. In Berne, for example, the Radicals have had an uninterrupted supremacy for more than a quarter of a century, and in fact Geneva and Ticino are the only cantons where power shifts at short intervals from Right to Left and back again.[2]

Its good effects.

Such a condition of things naturally reduces the incentive to political organization and party warfare to a minimum, for the majority are not obliged to make any great effort to retain their position, and the minority are rendered passive by the consciousness that they have no chance of getting control of the government. This state of politics has an effect which is well worth consideration. In Switzer-

1884 one hundred and three. *Zeitschrift, op. cit.*, 1887. The large number in the latter year was due to the fact that the Centre, thinking the results of the recent popular votes at the referendum indicated a general discontent with the Radicals, nominated many more candidates than usual. They did not succeed, however, in electing as many deputies as before.

[1] Cf. an article in *Unsere Zeit*, 1873, ii. p. 349.

[2] Droz, *Etudes* (pp. 146–47), says this is true only of Geneva, but Ticino may be added, although the changes there are less rapid.

land those cantons where the majority is large and permanent are orderly and well governed, while Ticino, in which the parties are evenly balanced, is in a far less satisfactory condition; and the same rule applies, with a few marked exceptions, to the northern states in the American Union. The fact is, that when one party comprises so large a part of the community and is so firmly established that its supremacy is virtually undisputed, its members are not compelled to stand together and profess the same creed. They are at liberty to differ from one another, and follow their personal convictions; and hence the measures of the government are not carried by party votes, but are the result of a free expression of opinion. While, therefore, the views of all sections of the community are not taken into consideration precisely as they would be if no parties existed, still, so far as the bulk of the people is concerned, politics are conducted almost without regard to party. We have, in short, a condition that for practical purposes probably approaches as nearly to an entire absence of party as is possible in a democracy. Now, party government has merits as well as defects. Under many circumstances, it is both unavoidable and beneficial, and the lack of parties has its peculiar dangers. But in a community which has enough native honesty and intelligence to prevent personal corruption in its public men, and which does not require the friction of parties to stimulate progress, it is certainly a great advantage to get rid of the agitation, the partisanship, and the absence of a perfectly ingenuous expression of opinion, which are inseparable from party government.

Causes of the state of parties.

The causes of the peculiar relation of Swiss parties to the government, and of the condition of the parties themselves, may be sought in various directions. Something must be attributed to the shortness of the sessions of the Federal Assembly, which usually last only four or five weeks apiece, and hence give very little opportunity for the development of a party policy, or the consolidation of party ties. Something is due, no doubt, to the fact that the national government has little patronage in its gift that could be used to reward partisans, for the eighty-three hundred employees in the postal and telegraphic service, and about five hundred more in the other departments, include almost all the federal officials.[1] Moreover, the abuse of the power of appointment for political purposes is unknown in the national administration, and in that of most of the cantons; and therefore this fuel for party enthusiasm is lacking.[2]

Method of electing the Federal Council.

A more important cause may be found in the method of choosing the Federal Council. That the Swiss realize the effect on parties of the present system is evident from the arguments brought forward in connection with the proposal to transfer the election of the councillors from the Assembly to the people. The plan is advocated, on the ground that it would result in giving to the different groups a representation more in proportion to their numerical strength, that it would free the election from the cliques in the Assembly, and would make the

[1] Cf. Marsauche, pp. 47, 102–4.

[2] Cf. Winchester, pp. 80–81.

councillors more independent of that body, and better able to resist its alleged omnipotence; while against the proposal is urged the likelihood of struggles between the Federal Council and the Assembly, and among the councillors themselves.[1] In other words, the change is both favored and opposed, on the supposition that the councillors would stand for more decided opinions, instead of reflecting the somewhat amorphous condition of the Assembly.

Under the existing system, the motives for party organization are extremely weak. The fact that the deputies to the federal legislature are elected on local rather than national issues tends to prevent the organization of national parties; and as the same party is always in a majority in most of the cantons, it helps also to diminish the interest in elections and the activity of political campaigns. But if the federal councillors were chosen by direct popular vote, their election would inevitably become a matter of absorbing interest and drive local issues into the background. Moreover, the cantons are far from large, and the electoral districts for the National Council are smaller still, so that in choosing their representatives the people vote for neighbors whom they have known long. Again the Assembly, which is a comparatively small and permanent body of men,[2] picks out the federal councillors from among its own members. In the case of all national officers,

[1] Cf. Droz, *Etudes*, "Le mode d'election du conseil fédéral;" Marsauche, p. 263 *et seq.*

[2] A comparison of the elections of 1881 and 1887 shows that of the 145 members of the National Council chosen at the former, 80 were reëlected six years later. *Zeitschrift*, 1882, and 1887, *op. cit.*

therefore, whether legislative or executive, the Swiss votes for men with whom he is personally acquainted, and this obviates the need of party machinery for the selection of candidates. Now if the Confederation were one vast district for electing the Federal Council, national conventions for the nomination of candidates would become a necessity, and the party organizations thus called into being would infallibly extend their influence over the whole range of politics, and produce a radical change in the character of public life. They would put an end to the low development of party which renders the permanent, business-like, non-partisan character of the Federal Council possible, which makes it possible for the councillors to retain their places permanently even when their policy does not prevail. The councillors would become the standard-bearers of the different groups, and could hardly maintain the mediating attitude that has made their position unique among the governments of the world.

American history throws some light on the probable effect of a change in the method of choosing the Federal Council, for the earlier Presidents of the United States, although not elected by Congress, were nominated, so far as nominations were made at all, by caucuses of the congressmen. Now during this period parties continued to exist only while there were real issues to keep them alive; and when the question of the relations with foreign powers, which was the most lasting source of division, died away after the war of 1812, the parties dissolved, and the era of good feeling began. But popular jealousy put an end to the habit

of congressional nomination, and before long the practice of holding national conventions sprang up in its stead.[1] This was accompanied by the creation of an elaborate party machinery, and by a systematic use of patronage as an engine in party warfare, until at length the organization has become as important a factor in the life of a party as the issues that are supposed to justify its existence. On more than one occasion, indeed, the perfection of its mechanism and the necessity of conventions for the selection of candidates has kept a party alive after it has ceased to represent any principles whatever. The modern American party without a principle is like a centipede without a head, which continues to march until destroyed by some external force. It may be observed, moreover, that the change in the method of nominating candidates has been followed by a loss of calibre in the men elected. During the earlier history of the United States every President was a man of great personal eminence, but since the nominating convention has become fully developed, very few of them have had at the time of their first election a really high reputation in national political life.[2]

[1] Congressional caucuses were first held in 1800, and from that time through 1816 they were the regular mode of nomination. In 1820 they were not used, because Monroe was reëlected by common consent; and the attempt to revive them four years later proved a failure. At the succeeding elections nominations by state legislatures were common, but never developed into a system. The first nominating convention was held in 1832, and the practice became thoroughly established in 1840.

[2] The only cases that can be considered exceptions up to this time are those of Polk, who had been Speaker of the House; Buchanan, who had been Secretary of State; and Garfield, who had been one of the leaders of his party in Congress. But every one of the earlier Presidents was

The effect of the referendum.

A third cause of the state of parties in Switzerland must be sought in the referendum. The rôle of the political groups in the working of that institution is a matter of prime importance. Sometimes their influence is very great, sometimes insignificant, but speaking generally it cannot be said that the people obey the dictation of party; and this is a point that merits particular attention. It is indeed essential to the success of the system, for if in a country where the parties are as stable as they are in Switzerland the people voted as their political leaders directed, the laws passed by a majority of the legislature would almost invariably be ratified at the polls. This, however, is very far from being the case, especially in some of the cantons. A marked instance of the want of control of the party chiefs over the popular vote occurred in 1891, when the Assembly passed well nigh unanimously a law for pensioning federal officials, which was nevertheless rejected by the people by a vote of nearly four to one.

The federal referendum used as a party weapon at first;

The extent to which the parties influence the action of the people on national laws may be seen by examining the history of the federal referenda.[1] The men who had opposed the constitution of 1874 found in the referendum a new weapon, and taking advantage of the reaction

at the time of his first election more distinguished than any of these three.

[1] Cf. Droz, *Etudes*, pp. 71–82, 460–62; Deploige, pp. 134–54; and see p. 255, note 1, *supra*. In Ticino, where the parties are evenly balanced, the referendum is usually resorted to as a party weapon. Cf. Deploige, pp. 166–67.

which set in at that time, they demanded popular votes upon a number of laws during the next three years, usually with success. After 1877, however, this method of warfare was abandoned for a while, and the few measures which were brought before the people seem to have had no connection with party politics. The truce continued for five years, when the Radicals, who had obtained a large majority in the National Council, aroused hostility by unseating opponents, gerrymandering districts, and passing unpopular laws. Some of the latter would have been voted down without the assistance of any party, and in fact the people rejected one measure which appears to have had the support of all the groups; but although the opposition did not create the popular discontent, they tried hard to draw profit from it. Hoping by frequent rebuffs to discredit the party in power, they threw their weight against measures to which they had no intrinsic objections, and in 1884 they prevailed upon the people to reject four laws at once. Curiously enough, the popular discontent did not affect the elections which took place in the autumn of that year, for the different groups were returned in about the same proportions as before. The opposition had succeeded in exasperating the foe and in frustrating some of his plans, but had not increased their own popularity; and it was probably for this reason that the use of the referendum as a party weapon did not continue after the elections of 1884. Since that time the referendum has been put in operation a good many times, and not infrequently with effect, but in only one case — that

but not of late years.

of the bankruptcy law — can it be said to have been made an instrument of party.

During the years 1875–77 and 1882–84, therefore, the referendum was used mainly for party purposes, but apart from these two periods such a use has been distinctly exceptional. It may be observed, moreover, that the people have never voted on strict party lines, at least never when a law was rejected; for even in 1884, when the opposition was strongest, and when every measure to which the referendum was applied was voted down, the Radicals polled at the election a majority of the total popular vote.[1] The Right simply took advantage of the general discontent to win on certain measures the votes of men who were otherwise supporters of the government. The fact that a popular vote is not cast on party lines does not, however, prevent certain general tendencies of thought from making themselves felt. We should naturally expect this to be the case in a nation so sharply divided as Switzerland between different religions and races; and it is quite consistent with an absence of direct party influence on the vote. An unprogressive community is likely to take a conservative view of any measure proposed, and follow its natural bias, although its members are not controlled by any organization, and do not obey any recognized political leaders. Such is the case in Switzerland, where the tendency of a canton to reject laws may, as a rule, be roughly measured by the proportion of Catholics in its population. The majority of the As-

The people do not vote in strict party lines.

[1] *Zeitschrift*, 1887, p. 417.

sembly is progressive, but the Swiss Catholics are in general conservative, and hence are inclined to vote "No," while the Protestant German cantons, like Zurich, the two Basles, Glarus, and Thurgau, usually vote "Yes."[1] That this is not the effect of drawing party lines is shown by the fact that Vaud, although strongly radical, has been one of the cantons most commonly found on the negative side.

How far the parties prepare the demand for the vote.

One naturally inquires how the demand for a popular vote is organized, for it is evident that thirty thousand signatures are not collected without a considerable effort. In the case of laws that have a bearing on religion, or where for any reason the referendum is used as a party weapon, the demand is organized by the members of the Catholic opposition in the Assembly, who are often assisted by the *Berner Volkspartei* and the *Eidgenossische Verein*, both conservative societies. On other occasions, like that of the laws to be voted upon in October of this year, the movement takes place spontaneously, without any help from the political leaders.[2] Again committees of the persons or districts specially interested are commonly formed for the purpose of collecting the necessary signatures to the petition. This was done at Geneva, in the case of the tariff of 1891, which bore severely on the trade of the city. Sometimes the canvass is made quietly from house to house, sometimes by means of public meetings and placards. In short,

[1] Cf. Chatelanat, *Zeitschrift*, 1879, p. 48; *Nachweiser, St. Gallen, op. cit.*, pp. 73–74; Deploige, p. 138.

[2] *Bib. Univ.*, Aug., 1896, p. 438.

there is no regular system of proceeding, and the method adopted varies with the circumstances of each case.[1]

The referendum diminishes the importance of party.

Not only do the different political groups fail to exercise a decisive influence at the referendum, but the institution itself tends in a variety of ways to lessen the importance and increase the stability of the parties.

By splitting up the issues.

In purely representative democracies, election is the sole political act of the people, who retain no direct control over their representatives. Now an election under these conditions is in reality only a choice between two or more rival candidates or rival parties, to one of which the destinies of the country must be committed; and hence the parties and their opinions are supremely important. But in Switzerland, where the people have a right to vote on each measure separately, there is no such necessity of choosing between the programmes of opposing parties, and of accepting some one of them in its entirety. The referendum, therefore, deprives political programmes of much of their significance, by allowing the people to elect a representative, and then reject any of his measures that they do not like. It tends, especially in the obligatory form, to split up political issues, and thus prevents the people from passing judgment on the whole policy of the party in power. Its effect is, in fact, precisely the opposite of that of a general election under a parliamentary system, or a plebiscite such as Napoleon III. used to hold in France. At a

[1] Deploige, pp. 100–2.

general election in England, for example, although some one issue may be particularly prominent, the decision of the people is not confined to that issue, but comprehends the broader question which of the two great parties had better, on the whole, be intrusted with the government.[1] A general election helps, therefore, to consolidate and strengthen the parties. A French plebiscite involves the same question, except that the alternative, instead of being the rule of a rival party, is uncertainty, if not anarchy. But the referendum entails a decision only on the special measure under consideration, and hence the people in Switzerland are never called upon, either at an election or a referendum, to judge the conduct of a party as a whole. It is no doubt largely for this reason that Swiss political parties have no very definite programmes and little organization.

By drawing attention to measures instead of men.

Again, the referendum tends to draw attention to measures instead of men, and it is the personal admiration or dislike of public men that forms a great deal of the fibre of party allegiance. So marked is this result in Switzerland that a President of the Confederation once said that if any one were to question ten Swiss, all of them would know whether their country was well governed or not, but that nine of them would not be able to give the name of the President, and the tenth who might think he knew it would be mistaken.[2] After making all due allowance for exaggerated modesty in

[1] Cf. A. V. Dicey. *Contemp. Rev.* 57, pp. 492–95.

[2] Quoted by Winchester, p. 80.

the speaker, one feels impelled to ask how party leaders can be expected to thrive in such a land.

By weakening the motives for a change of parties.

The fact that the people retain the final power of rejecting all the laws has another important effect on the position of the parties, by diminishing the political responsibility of the representatives for the measures they enact. If a law is unpopular the people simply refuse to sanction it, and this prevents an outcry against the party that enacted it. If, on the other hand, the people ratify it, there is clearly no use in trying to persuade them that the men in power were very wrong in passing it, and ought to be turned out for doing so. Nor is there any chance for an opposition to work on the popular fears by foretelling the bad laws the ruling party is likely to pass if continued in power, because the people can always reject measures they do not like. Hence it is not easy to find arguments for electing a new set of representatives drawn either from the past or the future; and in short the ordinary motives for a change of parties are removed.

The relation of a representative to his constituents.

The relation of a deputy to his constituents is, indeed, very peculiar and very characteristic of Swiss political ideas. The rejection by them of a measure he has supported is not regarded as reason for putting some one else in his place; and throughout Switzerland, in cantonal as well as in federal matters, the people have an almost invariable habit of reëlecting representatives whose measures they have refused to sanction. A striking example of this was given in 1884. During the whole

term of the federal assembly then sitting the referendum had been demanded with unusual frequency, and every law submitted to popular vote had been rejected. No such general condemnation of the policy of the legislature had ever been known. It was supposed that the people were thoroughly disgusted with the autocratic radicalism of their representatives, and it was naturally expected that the next elections would result in a crushing defeat for the party in power; but instead of this the radical majority of the National Council was returned in larger numbers than before. Such an extraordinary state of things has puzzled the Swiss themselves, who have suggested various explanations of it.[1] One is that the voter distinguishes between the legislator and the laws, and recognizes that the former may do very valuable work, although some of his views are erroneous. Another is that the people, holding the final power in their own hands, are comparatively indifferent in regard to the men who draft the laws. A third is that the electoral districts are so arranged that the legislature does not fairly represent the majority of the people.[2] And still

[1] Deploige, pp. 149–50.

[2] That the Radicals increased their seats by this means there can be no doubt, but it does not help to explain the fact that they polled a larger popular vote than ever. The votes cast and the representatives elected by the three parties in the elections of 1881, 1884, and 1887, are given by the *Zeitschrift für Schweiz. Statistik* (1887, p. 417), as follows: —

	1881.		1884.		1887.	
	VOTE.	SEATS.	VOTE.	SEATS.	VOTE.	SEATS.
Left . .	169,058	83	187,118	88	171,788	87
Centre .	77,692	26	81,363	22	70,962	24
Right .	97,977	36	99,320	35	78,881	34

another is, that the phenomenon is inexplicable. While each of these theories contains, no doubt, a certain amount of truth, no one of them is entirely satisfactory. But whatever its cause may be, the habit itself is undeniable and universal.

It follows, of course, that the rejection of a law is not regarded as a censure upon the representatives who passed it. When the referendum was first introduced, some deputies, who had supported a bill and then saw it heavily voted down in their own districts, resigned; but their constituents reëlected them, on the ground that a dislike of one or more measures did not imply a loss of confidence. This view of the matter has now become a fundamental principle in Swiss politics, and there is only one instance in recent years of a resignation caused by a popular disapproval of a federal law. In December, 1891, the people rejected a bill for the purchase by the national government of shares in a Swiss railway company, and thereupon M. Welti, the President of the Confederation, resigned. His colleagues in the Federal Council urged him to reconsider his action, but in vain; for the ownership of the railroads by the state had long been his most cherished project, and although the result of the vote was attributed more to an objection to the price than to dislike of the principle involved, yet he felt disappointed and withdrew. This was a very exceptional case, and M. Welti's motives were personal rather than political. His resignation, moreover, seems to have had no connection with party politics in any way.

The habit of disassociating measures from the repre-

sentatives who pass them naturally gives to the latter and to the groups of which they are members great permanency of tenure; and a study of Swiss history shows that since the general introduction of the referendum there has been a very marked increase in the stability of the political parties. The rejection of laws seems in fact to take the place of a change of party, for when there arrives one of the periods of discontent, which are recurrent everywhere, the people, instead of putting the opposition into office as in other countries, reëlect the old representatives, and give vent to their feelings by voting down the measures these men have prepared. Such a method of rebuking the party in power is quite as rational as any other, and perhaps as effective, while it has the merit of avoiding all violent changes of policy. It points to a curious mental attitude on the part of the electorate. The fact that the relative strength of the different groups is nearly constant proves that there is no large body of voters who throw themselves first on one side and then on the other. In short, there is no considerable class of independent voters at elections. But, on the other hand, the frequency with which the people reject the laws passed by their representatives shows that the number of independent voters at the referendum is very great, or perhaps it would be fair to say that in ordinary times every one is an independent. Both of these results spring from the lack of intensity in party life, which is due in great measure to the habit of submitting laws to popular vote.

Rejection of laws takes the place of a change of parties.

While the referendum has contributed to the absence of party government, its usefulness depends no less on the low development of party spirit; for if political feeling ran so high, or political organizations were so complete, that party lines were strictly drawn on all occasions, the referendum would be a mere formality, or rather it would be used only as a means of delaying and harassing the government. If therefore the system of electing the Federal Council by popular vote were to be introduced, and were to result in an elaborate party organization, the disintegrating force of the referendum might very well be overcome, and the institution might become injurious instead of beneficial.

Effect on parties of the character and traditions of the people.

After all these reasons have been suggested for the stability of the parties and the permanence of official tenure, a great deal remains that must be attributed to the traditions and the character of the people. There is a conviction among the Swiss that a capable public servant ought to be retained, even if his views do not in all respects agree with those of his constituents, and an opinion of this sort once firmly established has a very great effect in moulding the history and institutions of the nation. The constant change of officials, and the hunt for spoils which results from it, could hardly maintain their hold in America if the bulk of the people did not have an underlying feeling that public office was a privilege rather than a trust; and the doctrine of rotation is not more deeply rooted here than the opposite principle is in Switzerland. The Swiss, moreover, is hardheaded and business-like in politics, as in everything else, and

this appears in the absence of excitement and of demonstrations at elections. He is sober-minded and staid in all his pleasures, and Sir Henry Maine has pointed out that the popular interest in the battles of political parties is, in great measure, the interest in an unending cricket match between red and blue. But the Swiss does not seem to care for this aspect of public life. In short, he is not the sort of stuff that political parties are made of.

Comparison of Swiss and Greek democracy.

It is the habit to speak of Athens and Switzerland as the most complete examples of democracy in the ancient and modern world. The comparison is instructive and worth dwelling upon, because it brings into strong relief the characteristic features of the two systems. When the Greek spoke of democracy, he had in his mind the conduct of the administration. He meant the control by the mass of citizens of the question of peace and war, of the relations with the allies and the colonies, of the finances, the army, and the fleet. In Athens at the time of Demosthenes all these things had been placed in the hands of the assembly of the people, which managed them as far as possible directly, or by means of committees chosen for short periods by lot. But the same methods were not applied to legislation. To the Greek mind the laws were normally permanent and unchangeable. Their alteration was an exceptional event, and in Athens they were usually made by the ancient and undemocratic Court of Areopagus, no attempt having been made to organize a system of popular legislation. In Athens, therefore, the administration was conducted

directly by the people, but the power of legislation was far less under their control. Now in Switzerland precisely the reverse is true. It is hard to conceive how the control of legislation by the people could be rendered more absolute than it is made by the referendum and the initiative; but, on the other hand, the executive of the Confederation is removed as far from popular influence as is possible in a community where every public authority is ultimately based on universal suffrage.[1] The federal councillors virtually hold office for life, and they are chosen, not by the people, but by the Assembly, whose members enjoy in their turn a singularly stable tenure. It is commonly said that every form of government, in order to endure, must contain some element of a nature opposed to the general principle on which the government is based, and capable of preventing that principle from being carried to excess. Thus in a monarchy there must be something to limit the authority of the king, and in a democracy something to restrain popular impulse and fickleness. In Switzerland this element is to be found chiefly in the Federal Council, while the extreme application of the democratic principle is seen in the referendum and the initiative.

The Swiss Confederation is, on the whole, the most successful democracy in the world. Unlike almost every other state in Europe, it has no irreconcilables, — the only persons in its territory who could, in any sense,

[1] Formerly this was also the case in the cantons, but with the extension of the election of the executive council by the people, it is steadily becoming less true.

be classed under that name being a mere handful of anarchists, and these, as in our own land, are foreigners. The people are contented. The government is patriotic, far-sighted, efficient, and economical, steady in its policy, not changing its course with party fluctuations. Corruption in public life is almost unknown, and appointments to office are not made for political purposes by the federal authorities, or by those of most of the cantons. Officials are selected on their merits, and retained as long as they can do their work; and yet the evils of a bureaucracy scarcely exist. All this bears witness to the capacity of the Swiss for self-government, and to the integrity and statesmanship of their rulers. But it must be remembered that Switzerland is free from many of the difficulties that perplex other nations. The country is small, and experience proves that the larger the population the harder is the problem of free government. The Swiss, moreover, furnish in their social condition the very best material for a democracy. Wealth is comparatively evenly distributed. There are no great manufacturing centres with their army of operatives; no huge cities with their seething proletariat, and their burden of ignorance, poverty, and vice. There is no long line of immigrants, unused to the laws and customs of the land, to be trained and assimilated. There are no vast territories to be subdued, no mines or other great natural resources to be developed, and hence no immense mass of eager, restless capital, always taking some new shape and presenting some new question. The people also are decidedly stationary, not

Excellence of the Swiss government.

Simplicity of the problem.

perpetually moving about from one part of the country to another, and rising and falling in the social scale. Bagehot once said that the men of Massachusetts could work any constitution, and this may be repeated of the Swiss. The reason in each case is the same, for Switzerland is to-day in the same state that New England was in formerly. The social conditions are tolerably equal, the minimum level of education high, and political experience abundant. The Swiss statesmen deserve the highest praise for their labors, and the greatest admiration for their success, but we must beware of thinking that their methods would produce the same effects under different conditions. The problem they have had to solve is that of self-government among a small, stable, and frugal people, and this is far simpler than self-government in a great, rich, and ambitious nation.

APPENDIX.

FRANCE.

THE CONSTITUTIONAL LAWS.

25–28 févr. 1875. — *Loi relative à l'organisation des pouvoirs publics.*

ART. 1er. Le pouvoir législatif s'exerce par deux Assemblées : la Chambre des députés et la Sénat.

La Chambre des députés est nommée par le suffrage universel dans les conditions déterminées par la loi électorale. — La composition, le mode de nomination et les attributions du Sénat seront réglés par une loi speciale.

2. Le Président de la République est élu à la majorité absolue des suffrages par le Sénat et par la Chambre des députés réunis en Assemblée nationale.

Il est nommé pour sept ans ; il est rééligible.

3. Le Président de la République a l'initiative des lois, concurremment avec les membres des deux Chambres ; il promulgue les lois lorsqu'elles ont été votées par les deux Chambres ; il en surveille et en assure l'exécution.

Il a le droit de faire grâce ; les amnisties ne peuvent être accordées que par une loi.

Il dispose de la force armée.

Il nomme à tous les emplois civils et militaires.

Il préside aux solennités nationales ; les envoyés et les ambassadeurs des puissances étrangères sont accrédités auprès de lui.

Chacun des actes du Président de la République doit être contresigné par un ministre.

4. Au fur et à mesure des vacances qui se produiront à partir de la promulgation de la présente loi, le Président de la Répub-

lique nomme, en conseil des ministres, les conseillers d'Etat en service ordinaire.

Les conseillers d'Etat ainsi nommés ne pourront être révoqués que par décret rendu en conseil des ministres.

Les conseillers d'Etat nommés en vertu de la loi du 24 mai 1872 ne pourront, jusqu'à l'expiration de leurs pouvoirs, être révoqués que dans la forme déterminée par cette loi.

Après la séparation de l'Assemblée nationale, la révocation ne pourra être prononcée que par une résolution du Sénat.

5. Le Président de la République peut, sur l'avis conforme du Sénat, dissoudre la Chambre des députés avant l'expiration légale de son mandat.

(En ce cas, les colléges électoraux sont convoqués pour de nouvelles élections, dans le délai de trois mois.) [1]

6. Les ministres sont solidairement responsables devant les Chambres de la politique générale du Gouvernement, et individuellement de leurs actes personnels.

Le Président de la République n'est responsable que dans le cas de haute trahison.

7. En cas de vacance par décès ou pour toute autre cause, les deux Chambres réunies procèdent immédiatement à l'élection d'un nouveau président. Dans l'intervalle, le conseil des ministres est investi du pouvoir exécutif.

8. Les Chambres auront le droit, par délibérations séparées, prises dans chacune à la majorité absolue des voix, soit spontanément, soit sur la demande du Président de la République, de déclarer qu'il y a lieu de reviser les lois constitutionnelles.

Après que chacune des deux Chambres aura pris cette résolution, elles se réuniront en Assemblée nationale pour procéder à la révision.

Les délibérations portant révision des lois constitutionnelles, en tout ou en partie, devront être prises à la majorité absolue des membres composant l'Assemblée nationale.

Toutefois, pendant la durée des pouvoirs conférés par la loi du 20 nov. 1873 à M. le maréchal de MacMahon, cette révision ne peut avoir lieu que sur la proposition du Président de la République.[2]

[1] Amended by Art. 1 of the act of Aug. 14, 1884, *infra*.

[2] An addition was made to this by Art. 2 of the act of Aug. 14, 1884, *infra*.

(9. Le Siége du pouvoir exécutif et des deux Chambres est à Versailles.) [1]

24–28 févr. 1875. — *Loi relative à l'organisation du Sénat.*

(Art. 1er Le Sénat se compose de trois cents membres :

Deux cent vingt-cinq élus par les départements et les colonies, et soixante-quinze élus par l'Assemblée nationale.) [2]

[1] Repealed by the act of June 21, 1879, *infra*.

[2] The constitutional character of the first seven articles of this law was taken away by Art. 3, of the act of Aug. 14, 1884, and thereupon an act was passed on Dec. 9, 1884, of which the first seven articles are as follows : —

9–10 déc. 1884. — *Loi portant modification aux lois organiques sur l'organisation du Sénat et les élections des sénateurs.*

Art. 1er Le Sénat se compose de trois cents membres élus par les départements et les colonies.

Les membres actuels, sans distinction entre les sénateurs élus par l'Assemblée nationale ou le Sénat et ceux qui sont élus par les départements et les colonies, conservent leur mandat pendant le temps pour lequel ils ont été nommés.

2. Le département de la Seine élit dix sénateurs.

Le département du Nord élit huit sénateurs.

Les départements des Côtes-du-Nord, Finistère, Gironde, Ille-et-Vilaine, Loire, Loire-Inférieure, Pas-de-Calais, Rhône, Saône-et-Loire, Seine-Inférieure, élisent chacun cinq sénateurs.

L'Aisne, Bouches-du-Rhône, Charente-Inférieure, Dordogne, Haute-Garonne, Isère, Maine-et-Loire, Manche, Morbihan, Puy-de-Dôme, Seine-et-Oise, Somme, élisent, chacun quatre sénateurs.

L'Ain, Allier, Ardèche, Ardennes, Aube, Aude, Aveyron, Calvados, Charente, Cher, Corrèze, Corse, Côte-d'Or, Creuse, Doubs, Drôme, Eure, Eure-et-Loir, Gard, Gers, Hérault, Indre, Indre-et-Loire, Jura, Landes, Loir-et-Cher, Haute-Loire, Loiret, Lot, Lot-et-Garonne, Marne, Haute-Marne, Mayenne, Meurthe-et-Moselle, Meuse, Nièvre, Oise, Orne, Basses-Pyrénées, Haute-Saône, Sarthe, Savoie, Haute-Savoie, Seine-et-Marne, Deux-Sèvres, Tarn, Var, Vendée, Vienne, Haute-Vienne, Vosges, Yonne, élisent chacun trois sénateurs.

Les Basses-Alpes, Hautes-Alpes, Alpes-Maritimes, Ariége, Cantal, Lozère, Hautes-Pyrénées, Pyrénées-Orientales, Tarn-et-Garonne, Vaucluse, élisent chacun deux sénateurs.

Le territoire de Belfort, les trois départements de l'Algérie, les quatre colonies de la Martinique, de la Guadeloupe, de la Réunion et des Indes françaises, élisent chacun un sénateur.

3. Dans les départements où le nombre des sénateurs est augmenté par la présente loi, l'augmentation s'effectuera à mesure des vacances qui se produiront parmi les sénateurs inamovibles.

A cet effet, il sera, dans la huitaine de la vacance, procédé en séance publique à un tirage au sort pour déterminer le département qui sera appelé à élire un sénateur.

Cette élection aura lieu dans le délai de trois mois à partir du tirage au sort ;

(2. Les départements de la Seine et du Nord éliront chacun cinq sénateurs.)

(Les départements de la Seine-Inférieure, Pas-de-Calais, Gironde, Rhône, Finistère, Côtes-du-Nord, chacun quatre sénateurs.)

toutefois, si la vacance survient dans les six mois qui précèdent le renouvellement triennal, il n'y sera pourvu qu'au moment de ce renouvellement.

Le mandat ainsi conféré expirera en même temps que celui des autres sénateurs appartenant au même département.

4. Nul ne peut être sénateur s'il n'est Français, âgé de quarante ans au moins et s'il ne jouit de ses droits civils et politiques.

Les membres des familles qui ont régné sur la France sont inéligibles au Sénat.

5. Les militaires des armées de terre et de mer ne peuvent être élus sénateurs.

Sont exceptés de cette disposition :

1° Les maréchaux de France et les amiraux ;

2° Les officiers généraux maintenus sans limite d'âge dans la première section du cadre de l'état-major général et non pourvus de commandement ;

3° Les officiers généraux ou assimilés placés dans la deuxième section du cadre de l'état-major général ;

4° Les militaires des armées de terre et de mer qui appartiennent soit à la réserve de l'armée active, soit à l'armée territoriale.

6. Les sénateurs sont élus au scrutin de liste quand il y a lieu, par un collége réuni au chef-lieu du département ou de la colonie et composé :

1° Des députés ;

2° Des conseillers généraux ;

3° Des conseillers d'arrondissement ;

4° Des délégués élus parmi les électeurs de la commune, par chaque conseil municipal.

Les conseils composés de dix membres éliront un délégué.

Les conseils composés de douze membres éliront deux délégués.

Les conseils composés de seize membres éliront trois délégués.

Les conseils composés de vingt et un membres éliront six délégués.

Les conseils composés de vingt-trois membres éliront neuf délégués.

Les conseils composés de vingt-sept membres éliront douze délégués.

Les conseils composés de trente membres éliront quinze délégués.

Les conseils composés de trente-deux membres éliront dix-huit délégués.

Les conseils composés de trente-quatre membres éliront vingt et un délégués.

Les conseils composés de trente-six membres et au-dessus éliront vingt-quatre délégués.

Le conseil municipal de Paris élira trente délégués.

Dans l'Inde française, les membres des conseils locaux sont substitués aux conseillers d'arrondissement. Le conseil municipal de Pondichéry élira cinq délégués. Le conseil municipal de Karikal élira trois délégués. Toutes les autres communes éliront chacune deux délégués.

Le vote a lieu au chef-lieu de chaque établissement.

7. Les membres du Sénat sont élus pour neuf années.

Le Sénat se renouvelle tous les trois ans, conformément à l'ordre des séries de départements et colonies actuellement existantes.

(La Loire-Inférieure, Saône-et-Loire, Ille-et-Vilaine, Seine-et-Oise, Isère, Puy-de-Dôme, Somme, Bouches-du-Rhône, Aisne, Loire, Manche, Maine-et-Loire, Morbihan, Dordogne, Haute-Garonne, Charente-Inférieure, Calvados, Sarthe, Hérault, Basses-Pyrénées, Gard, Aveyron, Vendée, Orne, Oise, Vosges, Allier, chacun trois sénateurs.)

(Tous les autres départements, chacun deux sénateurs.)

(Le territoire de Belfort, les trois départements de l'Algérie, les quatre colonies de la Martinique, de la Gaudeloupe, de la Réunion et des Indes françaises, éliront chacun un sénateur.)

(3. Nul ne peut être sénateur s'il n'est Français âgé de quarante ans au moins, et s'il ne jouit de ses droits civils et politiques.)

(4. Les sénateurs des départements et des colonies sont élus à la majorité absolue, et, quand il y a lieu, au scrutin de liste, par un collége réuni au chef-lieu du département ou de la colonie et composé :

1°. Des députés ;

2°. Des conseillers généraux ;

3°. Des conseillers d'arrondissement ;

4°. Des délégués élus, un par chaque conseil municipal, parmi les électeurs de la commune.)

(Dans l'Inde française, les membres du conseil colonial ou des conseils locaux sont substitués aux conseillers généraux, aux conseillers d'arrondissement et aux délégués des conseils municipaux.)

(Ils votent au chef-lieu de chaque établissement.)

(5. Les sénateurs nommés par l'Assemblée sont élus au scrutin de liste et à la majorité absolue des suffrages.)

(6. Les sénateurs des départements et des colonies sont élus pour neuf années et renouvelables par tiers, tous les trois ans.)

(Au début de la première session, les départements seront divisés en trois séries, contenant chacune un égal nombre de sénateurs ; il sera procéde, par la voie du tirage au sort, à la désignation des séries qui devront être renouvelées à l'expiration de la première et de la deuxième période triennale.)

(7. Les sénateurs élus par l'Assemblée sont inamovibles.)

(En cas de vacance, par décès, démission ou autre cause, il sera, dans les deux mois, pourvu au remplacement par le Sénat lui-même.)

8. Le Sénat a, concurremment avec la Chambre des députés, l'initiative et la confection des lois.

Toutefois, les lois de finances doivent être, en premier lieu, présentées à la Chambre des députés et votées par elle.

9. Le Sénat peut être constitué en cour de justice pour juger soit le Président de la République, soit les ministres, et pour connaître des attentats commis contre la sûreté de l'Etat.

10. Il sera procédé à l'élection du Sénat un mois avant l'époque fixée par l'Assemblée nationale pour sa séparation.

Le Sénat entrera en fonctions et se constituera le jour même où l'Assemblée nationale se séparera.

11. La présente loi ne pourra être promulguée qu'après le vote définitif de la loi sur les pouvoirs publics.

16–18 juill. 1875. — *Loi constitutionnelle sur les rapports des pouvoirs publics.*

Art. 1er Le Sénat et la Chambre des députés se réunissent chaque année le second mardi de janvier, à moins d'une convocation antérieure faite par le Président de la République.

Les deux Chambres doivent être réunies en session cinq mois au moins chaque année. La session de l'une commence et finit en même temps que celle de l'autre.

(Le dimanche qui suivra la rentrée, des prières publiques seront adressées à Dieu dans les églises et dans les temples pour appeler son secours sur les travaux des Assemblées.)[1]

2. Le Président de la République prononce la clôture de la session. Il a le droit de convoquer extraordinairement les Chambres. Il devra les convoquer si la demande en est faite, dans l'intervalle des sessions, par la majorité absolue des membres composant chaque Chambre.

Le Président peut ajourner les Chambres. Toutefois, l'ajournement ne peut excéder le terme d'un mois ni avoir lieu plus de deux fois dans la même session.

3. Un mois au moins avant le terme légal des pouvoirs du Président de la République, les Chambres devront être réunies en Assemblée nationale pour procéder à l'élection du nouveau Président.

A défaut de convocation, cette réunion aurait lieu de plein droit le quinzième jour avant l'expiration de ces pouvoirs.

En cas de décès ou de démission du Président de la République, les deux Chambres se réunissent immédiatement et plein droit.

[1] Repealed by Art. 4. of the Act of Aug. 14, 1884.

Dans le cas où par application de l'art. 5 de la loi du 25 févr. 1875, la Chambre des députés se trouverait dissoute au moment où la présidence de la République deviendrait vacante, les colléges électoraux seraient aussitôt convoqués, et le Sénat se réunirait de plein droit.

4. Toute assemblée de l'une des deux Chambres qui serait tenue hors du temps de la session commune est illicite et nulle de plein droit, sauf le cas prévu par l'article précédent et celui où le Sénat est réuni comme cour de justice ; et, dans ce dernier cas, il ne peut exercer que des fonctions judiciaires.

5. Les séances du Sénat et celles de la Chambre des députés sont publiques.

Néanmoins, chaque Chambre peut se former en comité secret, sur la demande d'un certain nombre de ses membres, fixé par le règlement.

Elle décide ensuite, à la majorité absolue, si la séance doit être reprise en public sur le même sujet.

6. Le Président de la République communique avec les Chambres par des messages qui sont lus à la tribune par un ministre.

Les ministres ont leur entrée dans les deux Chambres et doivent être entendus quand ils le demandent. Ils peuvent se faire assister par des commissaires désignés, pour la discussion d'un projet de loi déterminé, par décret du Président de la République.

7. Le Président de la République promulgue les lois dans le mois qui suit la transmission au Gouvernement de la loi définitivement adoptée. Il doit promulguer dans les trois jours les lois dont la promulgation, par un vote exprès dans l'une et l'autre Chambre, aura été déclarée urgente.

Dans le délai fixé pour la promulgation, le Président de la République peut, par un message motivé, demander aux deux Chambres une nouvelle délibération, qui ne peut être refusée.

8. Le Président de la République négocie et ratifie les traités. Il en donne connaissance aux Chambre aussitôt que l'intérêt et la sûreté de l'Etat le permettent.

Les traités de paix, de commerce, les traités qui engagent les finances de l'Etat, ceux qui sont relatifs à l'etat des personnes et au droit de propriété des Français à l'etranger, ne sont définitifs qu'après avoir été votés par les deux Chambres. Nulle cession, nul échange, nulle adjonction de territoire ne peut avoir lieu qu'en vertu d'une loi.

9. Le Président de la République ne peut déclarer la guerre sans l'assentiment préalable des deux Chambres.

10. Chacune des Chambres est juge de l'eligibilité de ses membres et de la régularité de leur élection ; elle peut seule recevoir leur démission.

11. Le bureau de chacune des deux Chambres est élu chaque année pour la durée de la session et pour toute session extraordinaire qui aurait lieu avant la session ordinaire de l'année suivante.

Lorsque les deux Chambres se réunissent en Assemblée nationale, leur bureau se compose des président, vice-présidents et secrétaires du Sénat.

12. Le Président de la République ne peut être mis en accusation que par la Chambre des députés et ne peut être jugé que par le Sénat.

Les ministres peuvent être mis en accusation par la Chambre des députés pour crimes commis dans l'exercice de leurs fonctions. En ce cas, ils sont jugés par le Sénat.

Le Sénat peut être constitué en cour de justice par un décret du Président de la République, rendu en conseil des ministres, pour juger toute personne prévenue d'attentat commis contre la sûreté de l'Etat.

Si l'instruction est commencée par la justice ordinaire, le décret de convocation du Sénat peut être rendu jusqu'à l'arrêt de renvoi.

Une loi déterminera le mode de procéder pour l'accusation, l'instruction et le jugement.

13. Aucun membre de l'une ou de l'autre Chambre ne peut être poursuivi ou recherché à l'occasion des opinions ou votes émis par lui dans l'exercise de ses fonctions.

14. Aucun membre de l'une ou de l'autre Chambre ne peut, pendant la durée de la session, être poursuivi ou arrêté en matière criminelle ou correctionnelle qu'avec l'autorisation de la Chambre dont il fait partie, sauf le cas de flagrant délit.

La détention ou la poursuite d'un membre de l'une ou de l'autre Chambre est suspendue pendant la session, et pour toute sa durée, si la Chambre le requiert.

21–22 juin 1879. — *Loi qui revise l'art.* 9 *de la loi constitutionnelle du* 25 *févr.* 1875.

Article unique. L'art. 9 de la loi constitutionnelle du 25 févr. 1875 est abrogé.[1]

[1] Thereupon an act was passed of which the first four articles are as follows:

14–15 août 1884. — *Loi portant révision partielle des lois constitutionnelles.*

Art. 1er Le paragraphe 2 de l'art. 5 de le loi constitutionnelle du 25 févr. 1875, relative à l'organisation des pouvoirs publics, est modifié ainsi qu'il suit:

"En ce cas, les colléges électoraux sont réunis pour de nouvelles élections dans le délai de deux mois et la Chambre dans les dix jours qui suivront la clôture des opérations électorales."

Art. 2. — Le paragraphe 3 de l'art. 8 de la même loi du 25 févr. 1875 est complété ainsi qu'il suit:

"La forme républicaine du Gouvernement ne peut faire l'objet d'une proposition de révision.

"Les membres des familes ayant régné sur la France sont inéligibles à la Présidence de la République."

Art. 3. Les art. 1 à 7 de la loi constitutionnelle du 24 févr. 1875, relative à l'organisation du Sénat, n'auront plus le caractère constitutionnel.

Art. 4. — Le paragraphe 3 de l'art. 1er de la loi constitutionnelle du 16 juill. 1875, sur les rapports des pouvoirs publics, est abrogé.

22–23 juill. 1879. — *Loi relative au siége du Pouvoir executif et des Chambres à Paris.*

Art. 1er Le siége du Pouvoir exécutif et des deux Chambres est à Paris.

2. Le palais du Luxembourg et le Palais-Bourbon sont affectés: le premier au service du Sénat, le second à celui de la Chambre des députés.

Néanmoins, chacune des deux Chambres demeure maîtresse de désigner, dans la ville de Paris, le palais qu'elle veut occuper.

3. Les divers locaux du palais de Versailles, actuellement occupés par le Sénat et la Chambre des députés, conservent leur affectation.

Dans le cas où, conformément aux art. 7 et 8 de la loi du 25 févr. 1875, relative à l'organisation des pouvoirs publics, il y aura lieu à la réunion de l'Assemblée nationale, elle siégera à Versailles dans la salle actuelle de la Chambre des députés.

Dans le cas où, conformément à l'art. 9 de la loi du 24 févr. 1875 sur l'organisation du Sénat et à l'art. 12 de la loi constitutionnelle du 16 juill. 1875 sur les rapports des pouvoirs publics, le Sénat sera appelé à se constituer en cour de justice, il désignera la ville et le local où il entend tenir ses séances.

4. Le Sénat et la Chambre des députés siégeront à Paris à partir du 3 novembre prochain.

ITALY.

STATUTO DEL REGNO.

(4 marzo 1848.)

CARLO ALBERTO

Per Grazia di Dio

Re di Sardegna, di Cipro e di Gerusalemme,

Ecc., Ecc.

CON lealtà di Re e con affetto di padre Noi veniamo oggi a compiere quanto avevamo annunziato ai nostri amatissimi sudditi col nostro proclama dell' 8 dell' ultimo scorso febbraio, con cui abbiamo voluto dimostrare, in mezzo agli eventi straordinari che circondavano il paese, come la nostra confidenza in loro crescesse colla gravità delle circostanze, e come prendendo unicamente consiglio dagli impulsi del nostro cuore, fosse ferma nostra intenzione di conformare le loro sorti alla ragione dei tempi, agli interessi ed alla dignità della nazione.

Considerando Noi le larghe e forti istituzioni rappresentative contenute nel presente Statuto fondamentale come un mezzo il più sicuro di raddoppiare quei vincoli d'indissolubile affetto che stringono all'Italia nostra Corona un popolo che tante prove ci ha dato di fede, di obbedienza e d'amore, abbiamo determinato di sancirlo e promulgarlo nella fiducia che Iddio benedirà le pure nostre intenzioni, e che la nazione, libera, forte e felice, si mostrerà sempre più degna dell' antica fama, e saprà meritarsi un glorioso avvenire.

Perciò, di nostra certa scienza, Regia autorità, avuto il parere del nostro Consiglio, abbiamo ordinato ed ordiniamo in forza di statuto e legge fondamentale, perpetua ed irrevocabile della monarchia quanto segue:

Art. 1. La religione cattolica apostolica e romana è la sola religione dello Stato. Gli altri culti ora esistenti sono tollerati conformemente alle leggi.

Art. 2. Lo Stato è retto da un Governo monarchico rappresentativo. Il trono è ereditario secondo la legge salica.

Art. 3. Il potere legislativo sarà collettivamente esercitato dal Re e da due Camere: il Senato e quella dei Deputati.

Art. 4. La persona del Re è sacra e inviolabile.

Art. 5. Al Re solo appartiene il potere esecutivo.

Egli è il capo supremo dello Stato; comanda tutte le forze di terra e di mare; dichiara la guerra, fa i trattati di pace, d'alleanza, di commercio ed altri, dandone notizia alle Camere tosto che l'interesse e la sicurezza dello Stato il permetano, ed unendovi le comunicazioni opportune. I trattati che importassero un onere alle finanze, o variazioni di territorio dello Stato, non avranno effetto se non dopo ottenuto l'assenso delle Camere.

Art. 6. Il Re nomina a tutte le cariche dello Stato, e fa i decreti e regolamenti necessari per l'esecuzione delle leggi, senza sospenderne l'osservanza o dispensarne.

Art. 7. Il Re solo sanziona le leggi e le promulga.

Art. 8. Il Re può far grazia e commutare le pene.

Art. 9. Il Re convoca in ogni anno le due Camere; può prorogarne le Sessioni, e disciogliere quella dei deputati; ma in quest' ultimo caso ne convoca un'altra nel termine di quattro mesi.

Art. 10. La proposizione delle leggi apparterrà al Re ed a ciascuna delle due Camere. Però ogni legge d'imposizione di tributi, o di approvazione dei bilanci e dei conti dello Stato, sarà presentata prima alla Camera dei deputati.

Art. 11. Il Re è maggiore all'età di diciotto anni compiti.

Art. 12. Durante la minorità del Re, il principe suo più prossimo parente nell'ordine della successione al trono, sarà reggente del regno, se ha compiuto gli anni ventuno.

Art. 13. Se, per la minorità del principe chiamato alla reggenza, questa è devoluta ad un parente più lontano, il reggente, che sarà entrato in esercizio, conserverà la reggenza fino alla maggiorità del Re.

Art. 14. In mancanza di parenti maschi, la reggenza apparterrà alla regina madre.

Art. 15. Se manca anche la madre, le Camere, convocate fra dieci giorni dai ministri, nomineranno il reggente.

Art. 16. Le disposizioni precedenti relative alla reggenza sono applicabili al caso in cui il Re maggiore si trovi nella fisica impossibilità di regnare. Però se l'erede presuntivo del trono ha compiuti i diciotto anni, egli sarà in tal caso di pieno diritto il reggente.

Art. 17. La regina madre è tutrice del Re finchè egli abbia compiuta l'età di sette anni; da questo punto la tutela passa al reggente.

Art. 18. I diritti spettanti alla potestà civile in materia beneficiaria, o concernenti all'esecuzione delle provvisioni d'ogni natura provenienti dall'estero, saranno esercitati dal Re.

Art. 19. La dotazione della Corona è conservata durante il regno attuale quale risulterà dalla media degli ultimi dieci anni.

Il Re continuerà ad avere l'uso dei reali palazzi, ville, giardini e dipendenze, nonchè di tutti indistintamente i beni mobili spettanti alla Corona di cui sarà fatto inventario a diligenza di un ministro responsabile.

Per l'avvenire la dotazione predetta verrà stabilita per la durata d'ogni regno dalla prima Legislatura dopo l'avvenimento del Re al trono.

Art. 20. Oltre i beni, che il Re attualmente possiede in proprio, formeranno il suo privato patrimonio ancora quelli che potesse in seguito acquistare a titolo oneroso o gratuito durante il suo regno.

Il Re può disporre del suo patrimonio privato, sia per atti fra vivi, sia per testamento, senza essere tenuto alle regole delle leggi civili, che limitano la quantità disponibile. Nel rimanente il patrimonio del Re è soggetto alle leggi che reggono le altre proprietà.

Art. 21. Sarà provveduto per legge ad un assegnamento annuo pel principe ereditario giunto alla maggiorità, od anche prima in occasione di matrimonio; all' appannaggio dei principi della famiglia e del sangue reale nelle condizioni predette; alle doti delle principesse, ed al dovario delle regine.

Art. 22. Il Re, salendo al Trono, presta in presenza delle Camere riunite il giuramento di osservare lealmente il presente Statuto.

Art. 23. Il reggente prima di entrare in funzioni presta il giuramento di essere fedele al Re, di osservare lealmente lo Statuto e le leggi dello Stato.

DEI DIRITTI E DEI DOVERI DEI CITTADINI.

Art. 24. Tutti i regnicoli, qualunque sia il loro titolo o grado, sono eguali dinanzi alla legge.

Tutti godono egualmente i diritti civili e politici, e sono ammessibili alle cariche civili e militari, salve le eccezioni determinate dalle leggi.

Art. 25. Essi contribuiscono indistintamente, nella proporzione dei loro averi, ai carichi dello Stato.

Art. 26. La libertà individuale è guarentita.

Niuno può essere arrestato o tradotto in giudizio, se non nei casi previsti dalla legge, e nelle forme che essa prescrive.

Art. 27. Il domicilio è inviolabile. Niuna visita domiciliare può aver luogo se non in forza d'una legge, e nelle forme che essa prescrive.

Art. 28. La stampa sarà libera, ma una legge ne reprime gli abusi.

Tuttavia le bibbie, i catechismi, i libri liturgici e di preghiera non potranno essere stampati senza il preventivo permesso del vescovo.

Art. 29. Tutte le proprietà, senza alcuna eccezione, sono inviolabili.

Tuttavia, quando l'interesse pubblico legalmente accertato lo esiga, si può essere tenuti a cederle in tutto od in parte, mediante una giusta indennità conformemente alle leggi.

Art. 30. Nessun tributo può essere imposto o riscosso se non è stato consentito dalle Camere e sanzionato dal Re.

Art. 31. Il debito pubblico è guarentito.

Ogni impegno dello Stato verso i suoi creditori è inviolabile.

Art. 32. E riconosciuto il diritto di adunarsi pacificamente e senz' armi, uniformandosi alle leggi che possono regolarne l'esercizio nell' interesse della cosa pubblica.

Questa disposizione non è applicabile alle adunanze in luoghi pubblici, od aperti al pubblico, i quali rimangono intieramente soggetti alle leggi di polizia.

DEL SENATO.

Art. 33. Il Senato è composto di membri nominati a vita dal Re, in numero non limitato, aventi l'età di quarant'anni compiuti, e scelti nelle categorie seguenti:

1° Gli arcivescovi e vescovi dello Stato;

2° Il presidente della Camera dei deputati;

3° I deputati dopo tre Legislature o sei anni d'esercizio;

4° I ministri di Stato;

5° I ministri segretari di Stato;

6° Gli ambasciatori;

7° Gl'inviati straordinari, dopo tre anni di tali funzioni;

8° I primi presidenti e presidenti del Magistrato di Cassazione e della Camera dei conti;

9° I primi presidenti dei Magistrati d'appello;

10° L'avvocato generale presso il Magistrato di Cassazione ed il procuratore generale, dopo cinque anni di funzioni;

11° I presidenti di classe dei Magistrati di appello, dopo tre anni di funzione;

12° I consiglieri del Magistrato di Cassazione e della Camera de conti, dopo cinque anni di funzioni;

13° Gli avvocati generali o fiscali generali presso i Magistrati d'appello, dopo cinque anni di funzioni;

14° Gli uffiziali generali di terra e di mare;

Tuttavia i maggiori generali e i contrammiragli dovranno avere da cinque anni quel grado in attività;

15° I consiglieri di Stato dopo cinque anni di funzioni;

16° I membri dei Consigli di divisione, dopo tre elezioni alla loro Presidenza;

17° Gl'intendenti generali dopo sette anni di esercizio;

18° I membri della regia Accademia delle scienze, dopo sette anni di nomina;

19° I membri ordinari del Consiglio superiore d'istruzione pubblica, dopo sette anni d'esercizio;

20° Coloro che con servizi o meriti eminenti avranno illustrata la patria;

21° Le persone che da tre anni pagano tre mila lire d'imposizione diretta in ragione dei loro beni o della loro industria.

Art. 34. I Principi della famiglia reale fanno di pien diritto parte del Senato. Essi seggono immediatamente dopo il presidente. Entrano in Senato a ventun anno, ed hanno voto a venticinque.

Art. 35. Il presidente e i vice-presidenti del Senato sono nominati dal Re.

Il Senato nomina nel proprio seno i suoi segretari.

Art. 36. Il Senato è costituito in alta Corte di giustizia con decreto del Re per giudicare dei crimini di alto tradimento e di attentato alla sicurezza dello Stato, e per giudicare i ministri accusati della Camera dei deputati.

In questi casi il Senato non è corpo politico. Esso non può occuparsi se non degli affari giudiziari, per cui fu convocato, sotto pena di nullità.

Art. 37. Fuori del caso di flagrante delitto, niun senatore può essere arrestato se non in forza di un ordine del Senato. Esso è solo competente per giudicare dei reati imputati ai suoi membri.

Art. 38. Gli atti coi quali si accertano legalmente le nascite, i matrimoni e le morti dei membri della famiglia reale, sono presentati al Senato, che ne ordina il deposito ne'suoi archivi.

DELLA CAMERA DEI DEPUTATI.

Art. 39. La Camera elettiva è composta di deputati scelti dai collegi elettorali conformemente alla legge.

Art. 40. Nessun deputato può essere ammesso alla Camera se non è suddito del Re, non ha compiuta l'età di trent' anni, non gode i diritti civili e politici, e non riunisce in sè gli altri requisiti voluti dalla legge.

Art. 41. I deputati rappresentano la nazione in generale e non le sole provincie in cui furono eletti.

Nessun mandato imperativo può loro darsi dagli elettori.

Art. 42. I deputati sono eletti per cinque anni; il loro mandato cessa di pien diritto alla spirazione di questo termine.

Art. 43. Il presidente, i vice-presidenti e i segretari della Camera dei deputati sono da essa stessa nominati nel proprio seno al principio d'ogni Sessione per tutta la sua durata.

Art. 44. Se un deputato cessa per qualunque motivo dalle sue funzioni, il collegio che l'aveva eletto sarà tosto convocato per fare una nuova elezione.

Art. 45. Nessun deputato può essere arrestato fuori del caso di flagrante delitto nel tempo della Sessione, nè tradotto in giudizio in materia criminale senza il previo consenso della Camere.

Art. 46. Non può eseguirsi alcun mandato di cattura per debiti contro un deputato durante la Sessione della Camera, come neppure nelle tre settimane precedenti e susseguenti alla medesima.

Art. 47. La Camera dei deputati ha il diritto di accusare i ministri del Re, e di tradurli dinanzi all' alta Corte di giustizia.

DISPOSIZIONI COMUNI ALLE DUE CAMERE.

Art. 48. Le Sessioni del Senato e della Camera dei deputati cominciano e finiscono nello stesso tempo.

Ogni riunione di una Camera fuori del tempo della Sessione dell' altra è illegale, e gli atti ne sono interamente nulli.

Art. 49. I senatori e i deputati prima di essere ammessi all' esercizio delle loro funzioni prestano il giuramento di essere fedeli al Re, di osservare lealmente lo Statuto e le leggi dello Stato, e di esercitare le loro funzioni col solo scopo del bene inseparabile del Re e della patria.

Art. 50. Le funzioni di senatore e di deputato non danno luogo ad alcuna retribuzione od indennità.

Art. 51. I senatori e i deputati non sono sindacabili per ragione delle opinioni da loro emesse e dei voti dati nelle Camere.

Art. 52. Le sedute delle Camere sono pubbliche.

Ma quando dieci membri ne facciano per iscritto la domanda, esse possono deliberare in segreto.

Art. 53. Le sedute e le deliberazioni delle Camere non sono legali nè valide, se la maggiorità assoluta dei loro membri non è presente.

Art. 54. Le deliberazioni non possono essere prese se non alla maggiorità dei voti.

Art. 55. Ogni proposta di legge debb' essere dapprima esaminata dalle Giunte che saranno da ciascuna Camera nominate per i lavori preparatori. Discussa ed approvata da una Camera, la proposta sarà trasmessa all' altra per la discussione ed approvazione; e poi presentata alla sanzione del Re.

Le discussioni si faranno articolo per articolo.

Art. 56. Se un progetto di legge è stato rigettato da uno dei tre poteri legislativi, non potrà essere più riprodotto nella stessa Sessione.

Art. 57. Ognuno che sia maggiore d'età ha il diritto di mandare petizioni alle Camere, le quali debbono farle esaminare da una Giunta, e, dopo la relazione della medesima, deliberare se debbono essere prese in considerazione, ed in caso affermativo mandarsi al ministro competente, o depositarsi negli uffici per gli opportuni riguardi.

Art. 58. Nessuna petizione può essere presentata personalmente alle Camere.

Le autorità costituite hanno sole il diritto di indirizzare petizioni in nome collettivo.

Art. 59. Le Camere non possono ricevere alcuna deputazione, nè sentire altri, fuori dei propri membri, dei ministri e dei commissari del Governo.

Art. 60. Ognuna delle Camere è sola competente per giudicare della validità dei titoli di ammissione dei propri membri.

Art. 61. Così il Senato, come la Camera dei deputati, determina, per mezzo d'un suo regolamento interno, il modo secondo il quale abbia da esercitare le proprie attribuzioni.

Art. 62. La lingua italiana è la lingua officiale delle Camere.

È però facoltativo di servirsi della francese ai membri che appartengono ai paesi in cui questa è in uso, od in risposta ai medesimi.

Art. 63. Le votazioni si fanno per alzata e seduta, per divisione

e per squittinio segreto. Quest' ultimo mezzo sarà sempre impiegato per la votazione del complesso di una legge, e per ciò che concerne il personale.

Art. 64. Nessuno può essere ad un tempo senatore e deputato.

DEI MINISTRI.

Art. 65. Il Re nomina e revoca i suoi ministri.

Art. 66. I ministri non hanno voto deliberativo nell' una o nell' altra Camera se non quando ne sono membri.

Essi vi hanno sempre l'ingresso, e debbono essere sentiti sempre che lo richieggano.

Art. 67. I ministri sono risponsabili.

Le leggi e gli atti del Governo non hanno vigore se non sono muniti della firma d'un ministro.

DELL' ORDINE GIUDIZIARIO.

Art. 68. La giustizia emana dal Re, ed è amministrata in suo nome dai giudici che egli istituisce.

Art. 69. I giudici nominati dal Re, ad eccezione di quelli di mandamento, sono inamovibili dopo tre anni di esercizio.

Art. 70. I magistrati, tribunali e giudici attualmente esistenti sono conservati. Non si potrà derogare all' organizzazione giudiziaria se non in forza di una legge.

Art. 71. Niuno può essere distolto dai suoi giudici naturali.

Non potranno perciò essere creati tribunali o Commissioni straordinarie.

Art. 72. Le udienze dei tribunali in materia civile e i dibattimenti in materia criminale saranno pubblici conformemente alle leggi.

Art. 73. L'interpretazione delle leggi, in modo per tutti obbligatorio, spetta esclusivamente al potere legislativo.

DISPOSIZIONI GENERALI.

Art. 74. Le istituzioni comunali e provinciali e la circoscrizione dei comuni e delle provincie sono regolate dalla legge.

Art. 75. La leva militare è regolata dalla legge.

Art. 76. È istituita una milizia comunale sovra basi fissate dalla legge.

Art. 77. Lo Stato conserva la sua bandiera; e la coccarda azzurra è la sola nazionale.

Art. 78. Gli ordini cavallereschi ora esistenti sono mantenuti con le loro dotazioni. Queste non possono essere impiegate in altro uso fuorchè in quello prefisso dalla propria istituzione.

Il Re può creare altri ordini, e prescriverne gli statuti.

Art. 79. I titoli di nobiltà sono mantenuti a coloro che vi hanno diritto. Il Re può conferirne dei nuovi.

Art. 80. Niuno può ricevere decorazioni, titoli o pensioni da una potenza estera senza l'autorizzazione del Re.

Art. 81. Ogni legge contraria al presente Statuto è abrogata.

DISPOSIZIONI TRANSITORIE.

Art. 82. Il presente Statuto avrà il pieno suo effetto dal giorno della prima riunione delle due Camere, la quale avrà luogo appena compiute le elezioni. Fino a quel punto sarà provveduto al pubblico servizio d'urgenza con sovrane disposizioni secondo i modi e le forme sin qui seguìte, omesse tuttavia le interinazioni e registrazioni dei magistrati, che sono fin d'ora abolite.

Art. 83. Per l'esecuzione del presente Statuto, il Re si riserva di fare le leggi sulla stampa, sulle elezioni, sulla milizia comunale, sul riordinamento del Consiglio di Stato.

Sino alla pubblicazione della legge sulla stampa rimarranno in vigore gli ordini vigenti a quella relativi.

Art. 84. I ministri sono incaricati e responsabili della esecuzione e della piena osservanza delle presenti disposizioni transitorie.

Dato a Torino, addì quattro del mese di marzo l'anno del Signore mille ottocento quarant'otto e del regno nostro il decimo ottavo.

GERMANY.

VERFASSUNG DES DEUTSCHEN REICHS.

SEINE Majestät der König von Preussen im Namen des Norddeutschen Bundes, Seine Majestät der König von Bayern, Seine Majestät der König von Württemberg, Seine Königliche Hoheit der Grossherzog von Baden und Seine Königliche Hoheit der Grossherzog von Hessen und bei Rhein für die südlich vom Main belegenen Theile des Grossherzogthums Hessen, schliessen einen ewigen Bund zum Schutze des Bundesgebietes und des innerhalb desselben gültigen Rechtes, sowie zur Pflege der Wohlfahrt des Deutschen Volkes. Dieser Bund wird den Namen Deutsches Reich führen und wird nachstehende Verfassung haben.

I. BUNDESGEBIET.

ARTIKEL 1. Das Bundesgebiet besteht aus den Staaten Preussen mit Lauenburg, Bayern, Sachsen, Württemberg, Baden, Hessen, Mecklenburg-Schwerin, Sachsen-Weimar, Mecklenburg-Strelitz, Oldenburg, Braunschweig, Sachsen-Meiningen, Sachsen-Altenburg, Sachsen-Koburg-Gotha, Anhalt, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss älterer Linie, Reuss jüngerer Linie, Schaumburg-Lippe, Lippe, Lübeck, Bremen, Hamburg.[1]

II. REICHSGESETZGEBUNG.

ARTIKEL 2. Innerhalb dieses Bundesgebietes übt das Reich das Recht der Gesetzgebung nach Massgabe des Inhalts dieser Verfassung und mit der Wirkung aus, dass die Reichsgesetze den Landesgesetzen vorgehen. Die Reichsgesetze erhalten ihre verbindliche Kraft durch ihre Verkündigung von Reichswegen, welche vermittelst eines Reichsgesetzblattes geschieht. Sofern nicht in dem publizirten Gesetze ein anderer Anfangstermin seiner verbindlichen Kraft bestimmt ist, beginnt die letztere mit dem vierzehnten Tage nach

[1] Since the adoption of this constitution, Alsace-Lorraine and Heligoland have been annexed to the Empire.

dem Ablauf desjenigen Tages, an welchem das betreffende Stück des Reichsgesetzblattes in Berlin ausgegeben worden ist.

ARTIKEL 3. Für ganz Deutschland besteht ein gemeinsames Indigenat mit der Wirkung, dass der Angehörige (Unterthan, Staatsbürger) eines jeden Bundesstaates in jedem anderen Bundesstaate als Inländer zu behandeln und Demgemäss zum festen Wohnsitz, zum Gewerbebetriebe, zu öffentlichen Aemtern, zur Erwerbung von Grundstücken, zur Erlangung des Staatsbürgerrechtes und zum Genusse aller sonstigen bürgerlichen Rechte unter denselben Voraussetzungen wie der Einheimische zuzulassen, auch in Betreff der Rechtsverfolgung und des Rechtsschutzes demselben gleich zu behandeln ist.

Kein Deutscher darf in der Ausübung dieser Befugniss durch die Obrigkeit seiner Heimath, oder durch die Obrigkeit eines anderen Bundesstaates beschränkt werden.

Diejenigen Bestimmungen, welche die Armenversorgung und die Aufnahme in den lokalen Gemeindeverband betreffen, werden durch den im ersten Absatz ausgesprochenen Grundsatz nicht berührt.

Ebenso bleiben bis auf Weiteres die Verträge in Kraft, welche zwischen den einzelnen Bundesstaaten in Beziehung auf die Uebernahme von Auszuweisenden, die Verpflegung erkrankter und die Beerdigung verstorbener Staatsangehörigen bestehen.

Hinsichtlich der Erfüllung der Militairpflicht im Verhältniss zu dem Heimathslande wird im Wege der Reichsgesetzgebung das Nöthige geordnet werden.

Dem Auslande gegenüber haben alle Deutschen gleichmässig Anspruch auf den Schutz des Reichs.

ARTIKEL 4. Der Beaufsichtigung Seitens des Reichs und der Gesetzgebung desselben unterliegen die nachstehenden Angelegenheiten: —

1. die Bestimmungen über Freizügigkeit, Heimaths- und Niederlassungs-Verhältnisse, Staatsbürgerrecht, Passwesen und Fremdenpolizei und über den Gewerbebetrieb, einschliesslich des Versicherungswesens, soweit diese Gegenstände nicht schon durch den Artikel 3 dieser Verfassung erledigt sind, in Bayern jedoch mit Ausschluss der Heimaths- und Niederlassungs-Verhältnisse, desgleichen über die Kolonisation und die Auswanderung nach ausserdeutschen Ländern;

2. die Zoll- und Handelsgesetzgebung und die für die Zwecke des Reichs zu verwendenden Steuern;

3. die Ordnung des Maass-, Münz- und Gewichtssystems, nebst Feststellung der Grundsätze über die Emission von fundirtem und unfundirtem Papiergelde;

4. die Allgemeinen Bestimmungen über das Bankwesen;

5. die Erfindungspatente;

6. der Schutz des geistigen Eigenthums;

7. Organisation eines gemeinsamen Schutzes des Deutschen Handels im Auslande, der Deutschen Schifffahrt und ihrer Flagge zur See und Anordnung gemeinsamer konsularischer Vertretung, welche vom Reiche ausgestattet wird;

8. das Eisenbahnwesen, in Bayern vorbehaltlich der Bestimmung im Artikel 46, und die Herstellung von Land- und Wasserstrassen im Interesse der Landesvertheidigung und des allgemeinen Verkehrs;

9. der Flösserei- und Schiffahrtsbetrieb auf den mehreren Staaten gemeinsamen Wasserstrassen und der Zustand der letzteren, sowie die Fluss- und sonstigen Wasserzolle; desgleichen die Seeschifffahrtszeichen (Leuchtfeuer, Tonnen, Baken und sonstige Tagesmarken);[1]

10. das Post- und Telegraphenwesen, jedoch in Bayern und Württemberg nur nach Massgabe der Bestimmung im Artikel 52;

11. Bestimmungen über die wechselseitige Vollstreckung von Erkenntnissen in Civilsachen und Erledigung von Requisitionen überhaupt;

12. sowie über die Beglaubigung von öffentlichen Urkunden;

13. die gemeinsame Gesetzgebung über das gesammte bürgerliche Recht, das Strafrecht und das gerichtliche Verfahren:[2]

14. das Militairwezen des Reichs und die Kriegsmarine;

15. Massregeln der Medizinal- und Veterinairpolizei;

16. die Bestimmungen über die Presse und das Vereinswesen.

Artikel 5. Die Reichsgesetzgebung wird ausgeübt durch den Bundesrath und den Reichstag. Die Uebereinstimmung der Mehrheitsbeschlüsse beider Versammlungen ist zu einem Reichsgesetze erforderlich und ausreichend.

Bei Gesetzesvorschlägen über das Militairwesen, die Kriegsmarine und die im Artikel 35. bezeichneten Abgaben giebt, wenn im Bundes-

[1] The last nine words were added by the amendment of March 3, 1873.

[2] This is the form of the clause, as amended on December 20, 1873. In the original form it read as follows: "Die gemeinsame Gesetzgebung über das Obligationsrecht, Strafrecht, Handels- und Wechselrecht und das gerichtliche Verfaren."

rathe eine Meinungsverschiedenheit stattfindet, die Stimme des Präsidiums den Ausschlag, wenn sie sich für die Aufrechthaltung der bestehenden Einrichtungen ausspricht.

III. Bundesrath.

Artikel 6. Der Bundesrath besteht aus den Vertretern der Mitglieder des Bundes, unter welchen die Stimmführung sich in der Weise vertheilt, dass Preussen mit den ehemaligen Stimmen von Hannover, Kurhessen, Holstein, Nassau und Frankfurt 17 Stimmen.

führt, Bayern 6 "
Sachsen 4 "
Württemberg 4 "
Baden 3 "
Hessen 3 "
Mecklenburg-Schwerin . . . 2 "
Sachsen-Weimar 1 "
Mecklenburg-Strelitz . . . 1 "
Oldenburg 1 "
Braunschweig 2 "
Sachsen-Meiningen 1 "
Sachsen-Altenburg 1 "
Sachsen-Koburg-Gotha . . . 1 "
Anhalt 1 "
Schwarzburg-Rudolstadt . . . 1 "
Schwarzburg-Sondershausen . . 1 "
Waldeck 1 "
Reuss älterer Linie 1 "
Reuss jüngerer Linie 1 "
Schaumburg-Lippe 1 "
Lippe 1 "
Lübeck 1 "
Bremen 1 "
Hamburg 1 "

Zusammen 58 Stimmen.

Jedes Mitglied des Bundes kann so viel Bevollmächtigte zum Bundesrathe ernennen, wie es Stimmen hat, doch kann die Gesammtheit der zuständigen Stimmen nur einheitlich abgegeben werden.

ARTIKEL 7. Der Bundesrath beschliesst: —

1. über die dem Reichstage zu machenden Vorlagen und die von demselben gefassten Beschlüsse;

2. über die zur Ausführung der Reichsgesetze erforderlichen allgemeinen Verwaltungsvorschriften und Einrichtungen, sofern nicht durch Reichsgesetz etwas Anderes bestimmt ist;

3. über Mängel, welche bei der Ausführung der Reichsgesetze oder der vorstehend erwähnten Vorschriften oder Einrichtungen hervortreten.

Jedes Bundesglied ist befugt, Vorschläge zu machen und in Vortrag zu bringen, und das Präsidium ist verpflichtet, dieselben der Berathung zu übergeben.

Die Beschlussfassung erfolgt, vorbehaltlich der Bestimmungen in den Artikeln 5, 37, und 78, mit einfacher Mehrheit. Nicht vertretene oder nicht instruirte Stimmen werden nicht gezählt. Bei Stimmengleichheit giebt die Präsidialstimme den Ausschlag.

Bei der Beschlussfassung über eine Angelegenheit, welche nach den Bestimmungen dieser Verfassung nicht dem ganzen Reiche gemeinschaftlich ist, werden die Stimmen nur derjenigen Bundesstaaten gezählt, welchen die Angelegenheit gemeinschaftlich ist.

ARTIKEL 8. Der Bundesrath bildet aus seiner Mitte dauernde Ausschüsse.

1. für das Landheer und die Festungen;
2. für das Seewesen;
3. für Zoll- und Steuerwesen;
4. für Handel und Verkehr;
5. für Eisenbahnen, Post und Telegraphen;
6. für Justizwesen;
7. für Rechnungswesen.

In jedem dieser Ausschüsse werden ausser dem Präsidium mindestens vier Bundesstaaten vertreten sein, und führt innerhalb derselben jeder Staat nur Eine Stimme. In dem Ausschuss für das Landheer und die Festungen hat Bayern einen ständigen Sitz, die übrigen Mitglieder desselben, sowie die Mitglieder des Ausschusses für das Seewesen werden vom Kaiser ernannt; die Mitglieder der anderen Ausschüsse werden von dem Bundesrathe gewählt. Die Zusammensetzung dieser Ausschüsse ist für jede Session des Bundesrathes resp. mit jedem Jahre zu erneuern, wobei die ausscheidenden Mitglieder wieder wählbar sind.

Ausserdem wird im Bundesrathe aus den Bevollmächtigten der Königreiche Bayern, Sachsen, und Württemberg und zwei, vom Bundesrathe alljährlich zu wählenden Bevollmächtigten anderer Bundesstaaten ein Ausschuss für die auswärtigen Angelegenheiten gebildet, in welchem Bayern den Vorsitz führt.

Den Ausschüssen werden die zu ihren Arbeiten nöthigen Beamten zur Verfügung gestellt.

ARTIKEL 9. Jedes Mitglied des Bundesrathes hat das Recht, im Reichstage zu erscheinen und muss daselbst auf Verlangen jederzeit gehört werden, um die Ansichten seiner Regierung zu vertreten, auch dann, wenn dieselben von der Majorität des Bundesrathes nicht adoptirt worden sind. Niemand kann gleichzeitig Mitglied des Bundesrathes und des Reichstages sein.

ARTIKEL 10. Dem Kaiser liegt es ob, den Mitgliedern des Bundesrathes den üblichen diplomatischen Schutz zu gewähren.

IV. PRÄSIDIUM.

ARTIKEL 11. Das Präsidium des Bundes steht dem Könige von Preussen zu, welcher den Namen Deutscher Kaiser führt. Der Kaiser hat das Reich völkerrechtlich zu vertreten, im Namen des Reichs Krieg zu erklären und Frieden zu schliessen, Bündnisse und andere Verträge mit fremden Staaten einzugehen, Gesandte zu beglaubigen und zu empfangen.

Zur Erklärung des Krieges im Namen des Reichs ist die Zustimmung des Bundesrathes erforderlich, es sei denn, dass ein Angriff auf das Bundesgebiet oder dessen Küsten erfolgt.

Insoweit die Verträge mit fremden Staaten sich auf solche Gegenstände beziehen, welche nach Artikel 4, in den Bereich der Reichsgesetzgebung gehören, ist zu ihrem Abschluss die Zustimmung des Bundesrathes und zu ihrer Gültigkeit die Genehmigung des Reichstages erforderlich.

ARTIKEL 12. Dem Kaiser steht es zu, den Bundesrath und den Reichstag zu berufen, zu eröffnen, zu vertagen und zu schliessen.

ARTIKEL 13. Die Berufung des Bundesrathes und des Reichstages findet alljährlich statt und kann der Bundesrath zur Vorbereitung der Arbeiten ohne den Reichstag, letzterer aber nicht ohne den Bundesrath berufen werden.

ARTIKEL 14. Die Berufung des Bundesrathes muss erfolgen, sobald sie von einem Drittel der Stimmenzahl verlangt wird.

ARTIKEL 15. Der Vorsitz im Bundesrathe und die Leitung der Geschäfte steht dem Reichskanzler zu, welcher vom Kaiser zu ernennen ist.

Der Reichskanzler kann sich durch jedes andere Mitglied des Bundesrathes vermöge schriftlicher Substitution vertreten lassen.

ARTIKEL 16. Die erforderlichen Vorlagen werden nach Massgabe der Beschlüsse des Bundesrathes im Namen des Kaisers an den Reichstag gebracht, wo sie durch Mitglieder des Bundesrathes oder durch besondere von letzterem zu ernennende Kommissarien vertreten werden.

ARTIKEL 17. Dem Kaiser steht die Ausfertigung und Verkündigung der Reichsgesetze und die Ueberwachung der Ausführung derselben zu. Die Anordnungen und Verfügungen des Kaisers werden im Namen des Reichs erlassen und bedürfen zu ihrer Gültigkeit der Gegenzeichnung des Reichskanzlers, welcher dadurch die Verantwortlichkeit übernimmt.

ARTIKEL 18. Der Kaiser ernennt die Reichsbeamten, lässt dieselben für das Reich vereidigen und verfügt erforderlichen Falles deren Entlassung.

Den zu einem Reichsamte berufenen Beamten eines Bundesstaates stehen, sofern nicht vor ihrem Eintritt in den Reichsdienst im Wege der Reichsgesetzgebung etwas Anderes bestimmt ist, dem Reiche gegenüber diejenigen Rechte zu, welche ihnen in ihrem Heimathslande aus ihrer dienstlichen Stellung zugestanden hatten.

ARTIKEL 19. Wenn Bundesglieder ihre verfassungsmässigen Bundespflichten nicht erfüllen, können sie dazu im Wege der Exekution angehalten werden. Diese Exekution ist vom Bundesrathe zu beschliessen und vom Kaiser zu vollstrecken.

V. REICHSTAG.

ARTIKEL 20. Der Reichstag geht aus allgemeinen und direkten Wahlen mit geheimer Abstimmung hervor.

Bis zu der gesetzlichen Regelung, welche im § 5, des Wahlgesetzes vom 31. Mai 1869 (Bundesgesetzbl. 1869, S. 145), vorbehalten ist, werden in Bayern 48, in Württemberg 17, in Baden 14, in Hessen südlich des Main 6, in Elsass-Lothringen 15 Abgeordnete gewählt, und beträgt demnach die Gesammtzahl der Abgeordneten 397.[1]

[1] In the original constitution nothing was said about representatives from

ARTIKEL 21. Beamte bedürfen keines Urlaubs zum Eintritt in den Reichstag.

Wenn ein Mitglied des Reichstages ein besoldetes Reichsamt oder in einem Bundesstaat ein besoldetes Staatsamt annimmt oder im Reichs- oder Staatsdienste in ein Amt eintritt, mit welchem ein höherer Rang oder ein höheres Gehalt verbunden ist, so verliert es Sitz und Stimme in dem Reichstag und kann seine Stelle in demselben nur durch neue Wahl wieder erlangen.

ARTIKEL 22. Die Verhandlungen des Reichstages sind öffentlich.

Wahrheitsgetreue Berichte über Verhandlungen in den öffentlichen Sitzungen des Reichstages bleiben von jeder Verantwortlichkeit frei.

ARTIKEL 23. Der Reichstag hat das Recht, innerhalb der Kompetenz des Reichs Gesetze vorzuschlagen und an ihn gerichtete Petitionen dem Bundesrathe resp. Reichskanzler zu überweisen.

ARTIKEL 24. Die Legislaturperiode des Reichstages dauert fünf Jahre.[1] Zur Auflösung des Reichstages während derselben ist ein Beschluss des Bundesrathes unter Zustimmung des Kaisers erforderlich.

ARTIKEL 25. Im Falle der Auflösung des Reichstages müssen innerhalb eines Zeitraumes von 60 Tagen nach derselben die Wähler und innerhalb eines Zeitraumes von 90 Tagen nach der Auflösung der Reichstag versammelt werden.

ARTIKEL 26. Ohne Zustimmung des Reichstages darf die Vertagung desselben die Frist von 30 Tagen nicht übersteigen und während derselben Session nicht wiederholt werden.

ARTIKEL 27. Der Reichstag prüft die Legitimation seiner Mitglieder und entscheidet darüber. Er regelt seinen Geschäftsgang und seine Disziplin durch eine Geschäfts-Ordnung und erwählt seinen Präsidenten, seine Vizepräsidenten und Schriftführer.

ARTIKEL 28. Der Reichstag beschliesst nach absoluter Stimmenmehrheit. Zur Gültigkeit der Beschlussfassung ist die Anwesenheit der Mehrheit der gesetzlichen Anzahl der Mitglieder erforderlich.[2]

Alsace-Lorraine, and the total number was fixed at 382. The change was made by the act of June 25, 1873, concerning the application of the constitution to Alsace-Lorraine.

[1] The original period was three years, the change to five being made by the amendment of March 19, 1888.

[2] To this article was originally added the following clause, which was

ARTIKEL 29. Die Mitglieder des Reichstages sind Vertreter des gesammten Volkes und an Aufträge und Instruktionen nicht gebunden.

ARTIKEL 30. Kein Mitglied des Reichstages darf zu irgend einer Zeit wegen seiner Abstimmung oder wegen der in Ausübung seines Berufes gethanen Aeusserungen gerichtlich oder disziplinarisch verfolgt oder sonst ausserhalb der Versammlung zur Verantwortung gezogen werden.

ARTIKEL 31. Ohne Genehmigung des Reichstages kann kein Mitglied desselben während der Sitzungsperiode wegen einer mit Strafe bedrohten Handlung zur Untersuchung gezogen oder verhaftet werden, ausser wenn es bei Ausübung der That oder im Laufe des nächstfolgenden Tages ergriffen wird.

Gleiche Genehmigung ist bei einer Verhaftung wegen Schulden erforderlich.

Auf Verlangen des Reichstages wird jedes Strafverfahren gegen ein Mitglied desselben und jede Untersuchungs- oder Civilhaft für die Dauer der Sitsungsperiode aufgehoben.

ARTIKEL 32. Die Mitglieder des Reichstages dürfen als solche keine Besoldung oder Entschädigung beziehen.

VI. ZOLL- UND HANDELSWESEN.

ARTIKEL 33. Deutschland bildet ein Zoll- und Handelsgebiet, umgeben von gemeinschaftlicher Zollgrenze. Ausgeschlossen bleiben die wegen ihrer Lage zur Einschliessung in die Zollgrenze nicht geeigneten einzelnen Gebietstheile.

Alle Gegenstände, welche im freien Verkehr eines Bundesstaates befindlich sind, können in jeden anderen Bundesstaat eingeführt und dürfen in letzterem einer Abgabe nur insoweit unterworfen werden, als daselbst gleichartige inländische Erzeugnisse einer inneren Steuer unterliegen.

ARTIKEL 34. Die Hansestädte Bremen und Hamburg mit einem dem Zweck entsprechenden Bezirke ihres oder des umliegenden Gebietes bleiben als Freihäfen ausserhalb der gemeinschaftlichen Zollgrenze, bis sie ihren Einschluss in dieselbe beantragen.

repealed by the amendment of Feb. 24, 1873: "Bei der Beschlussfassung über eine Angelegenheit, welche nach den Bestimmungen dieser Verfassung nicht dem ganzen Reiche gemeinschaftlich ist, werden die Stimmen nur derjenigen Mitglieder gezählt, die in Bundesstaaten gewählt sind, welchen die Angelegenheit gemeinschaftlich ist."

ARTIKEL 35. Das Reich ausschliesslich hat die Gesetzgebung über das gesammte Zollwesen, über die Besteuerung des im Bundesgebiete gewonnenen Salzes und Tabacks, bereiteten Branntweins und Bieres und aus Rüben oder anderen inländischen Erzeugnissen dargestellten Zuckers und Syrups, über den gegenseitigen Schutz der in den einzelnen Bundesstaaten erhobenen Verbrauchsabgaben gegen Hinterziehungen, sowie über die Massregeln, welche in den Zollausschlüssen zur Sicherung der gemeinsamen Zollgrenze erforderlich sind.

In Bayern, Württemberg und Baden bleibt die Besteuerung des inländischen Branntweins und Bieres der Landesgesetzgebung vorbehalten. Die Bundesstaaten werden jedoch ihr Bestreben darauf richten, eine Uebereinstimmung der Gesetzgebung über die Besteuerung auch dieser Gegenstände herbeizuführen.

ARTIKEL 36. Die Erhebung und Verwaltung der Zölle und Verbrauchssteuern (Art. 35) bleibt jedem Bundesstaate, soweit derselbe sie bisher ausgeübt hat, innerhalb seines Gebietes überlassen.

Der Kaiser überwacht die Einhaltung des gesetzlichen Verfahrens durch Reichsbeamte, welche er den Zoll- oder Steuerämtern und den Direktivbehörden der einzelnen Staaten, nach Vernehmung des Ausschusses des Bundesrathes für Zoll- und Steuerwesen, beiordnet.

Die von diesen Beamten über Mängel bei der Ausführung der gemeinschaftlichen Gesetzgebung (Art. 35) gemachten Anzeigen werden dem Bundesrathe zur Beschlussnahme vorgelegt.

ARTIKEL 37. Bei der Beschlussnahme über die zur Ausführung der gemeinschaftlichen Gesetzgebung (Art. 35) dienenden Verwaltungsvorschriften und Einrichtungen giebt die Stimme des Präsidiums alsdann den Ausschlag, wenn sie sich für Aufrechthaltung der bestehenden Vorschrift oder Einrichtung ausspricht.

ARTIKEL 38. Der Ertrag der Zölle und der anderen in Artikel 35, bezeichneten Abgaben, letzterer soweit sie der Reichsgesetzgebung unterliegen, fliesst in die Reichskasse.

Dieser Ertrag besteht aus der gesammten von den Zöllen und den übrigen Abgaben aufgekommenen Einnahme nach Abzug:

1. der auf Gesetzen oder allgemeinen Verwaltungsvorschriften beruhenden Steuervergütungen und Ermässigungen,
2. der Rückerstattungen für unrichtige Erhebungen,
3. der Erhebungs- und Verwaltungskosten, und zwar:

a. bei den Zöllen der Kosten, welche an den gegen das Ausland gelegenen Grenzen und in dem Grenzbezirke für den Schutz und die Erhebung der Zölle erforderlich sind,

b. bei der Salzsteuer der Kosten, welche zur Besoldung der mit Erhebung und Kontrolirung dieser Steuer auf den Salzwerken beauftragten Beamten aufgewendet werden,

c. bei der Rübenzuckersteuer und Tabacksteuer der Vergütung, welche nach den jeweiligen Beschlüssen des Bundesrathes den einzelnen Bundesregierungen für die Kosten der Verwaltung dieser Steuern zu gewähren ist,

d. bei den übrigen Steuern mit funfzehn Prozent der Gesammteinnahme.

Die ausserhalb der gemeinschaftlichen Zollgrenze liegenden Gebiete tragen zu den Ausgaben des Reichs durch Zahlung eines Aversums bei.

Bayern, Württemberg und Baden haben an dem in die Reichskasse fliessenden Ertrage der Steuern von Branntwein und Bier und an dem diesem Ertrage entsprechenden Theile des vorstehend erwähnten Aversums keinen Theil.

ARTIKEL 39. Die von den Erhebungsbehörden der Bundesstaaten nach Ablauf eines jeden Vierteljahres aufzustellenden Quartal-Extrakte und die nach dem Jahres- und Bücherschlusse aufzustellenden Finalabschlüsse über die im Laufe des Vierteljahres beziehungsweise während des Rechnungsjahres fällig gewordenen Einnahmen an Zöllen und nach Artikel 38. zur Reichskasse fliessenden Verbrauchsabgaben werden von den Direktivbehörden der Bundesstaaten, nach vorangegangener Prüfung, in Hauptübersichten zusammengestellt, in welchen jede Abgabe gesondert nachzuweisen ist, und es werden diese Uebersichten an den Ausschuss des Bundesrathes für das Rechnungswesen eingesandt.

Der letztere stellt auf Grund dieser Uebersichten von drei zu drei Monaten den von der Kasse jedes Bundesstaates der Reichskasse schuldigen Betrag vorläufig fest und setzt von dieser Feststellung den Bundesrath und die Bundesstaaten in Kenntniss, legt auch alljährlich die schliessliche Feststellung jener Beträge mit seinen Bemerkungen dem Bundesrathe vor. Der Bundesrath beschliesst über diese Feststellung.

ARTIKEL 40. Die Bestimmungen in dem Zollvereinigungsvertrage vom 8. Juli 1867, bleiben in Kraft, soweit sie nicht durch die

Vorschriften dieser Verfassung abgeändert sind und so lange sie nicht auf dem im Artikel 7., beziehungsweise 78. bezeichneten Wege abgeändert werden.

VII. Eisenbahnwesen.

Artikel 41. Eisenbahnen, welche im Interesse der Vertheidigung Deutschlands oder im Interesse des gemeinsamen Verkehrs für nothwendig erachtet werden, können kraft eines Reichsgesetzes auch gegen den Widerspruch der Bundesglieder, deren Gebiet die Eisenbahnen durchschneiden, unbeschadet der Landeshoheitsrechte, für Rechnung des Reichs angelegt oder an Privatunternehmer zur Ausführung konzessionirt und mit dem Expropriationsrechte ausgestattet werden.

Jede bestehende Eisenbahnverwaltung ist verpflichtet, sich den Anschluss neu angelegter Eisenbahnen auf Kosten der letzteren gefallen zu lassen.

Die gesetzlichen Bestimmungen, welche bestehenden Eisenbahn-Unternehmungen ein Widerspruchsrecht gegen die Anlegung von Parallel- oder Konkurrenzbahnen einräumen, werden, unbeschadet bereits erworbener Rechte, für das ganze Reich hierdurch aufgehoben. Ein solches Widerspruchsrecht kann auch in den künftig zu ertheilenden Konzessionen nicht weiter verliehen werden.

Artikel 42. Die Bundesregierungen verpflichten sich, die Deutschen Einsenbahnen im Interesse des allgemeinen Verkehrs wie ein einheitliches Netz verwalten und zu diesem Behuf auch die neu herzustellenden Bahnen nach einheitlichen Normen anlegen und ausrüsten zu lassen.

Artikel 43. Es sollen demgemäss in thunlichster Beschleunigung übereinstimmende Betriebseinrichtungen getroffen, insbesondere gleiche Bahnpolizei-Reglements eingeführt werden. Das Reich hat dafür Sorge zu tragen, dass die Eisenbahnverwaltungen die Bahnen jederzeit in einem die nöthige Sicherheit gewährenden baulichen Zustande erhalten und dieselben mit Betriebsmaterial so ausrüsten, wie das Verkehrsbedürfniss es erheischt.

Artikel 44. Die Eisenbahnverwaltungen sind verpflichtet, die für den durchgehenden Verkehr und zur Herstellung ineinander greifender Fahrpläne nöthigen Personenzüge mit entsprechender Fahrgeschwindigkeit, desgleichen die zur Bewältigung des Güterverkehrs nöthigen Güterzüge einzuführen, auch direkte Expeditionen

im Personen- und Güterverkehr, unter Gestattung des Ueberganges der Transportmittel von einer Bahn auf die andere, gegen die übliche Vergütung einzurichten.

ARTIKEL 45. Dem Reiche steht die Kontrole über das Tarifwesen zu. Dasselbe wird namentlich dahin wirken:

1. dass baldigst auf allen Deutschen Eisenbahnen übereinstimmende Betriebsreglements eingeführt werden;

2. dass die möglichste Gleichmässigkeit und Herabsetzung der Tarife erzielt, insbesondere, dass bei grösseren Entfernungen für den Transport von Kohlen, Koaks, Holz, Erzen, Steinen, Salz, Roheisen, Düngungsmitteln und ähnlichen Gegenständen ein dem Bedürfniss der Landwirthschaft und Industrie entspechender ermässigter Tarif, und zwar zunächst thunlichst der Einpfennig-Tarif eingeführt werde.

ARTIKEL 46. Bei eintretenden Nothständen, insbesondere bei ungewöhnlicher Theuerung der Lebensmittel, sind die Eisenbahnverwaltungen verpflichtet, für den Transport, namentlich von Getreide, Mehl, Hülsenfrüchten und Kartoffeln, zeitweise einen dem Bedürfniss entsprechenden, von dem Kaiser auf Vorschlag des betreffenden Bundesraths-Ausschusses festzustellenden, niedrigen Spezialtarif einzuführen, welcher jedoch nicht unter den niedrigsten auf der betreffenden Bahn für Rohprodukte geltenden Satz herabgehen darf.

Die vorstehend, sowie die in den Artikeln 42, bis 45, getroffenen Bestimmungen sind auf Bayern nicht anwendbar.

Dem Reiche steht jedoch auch Bayern gegenüber das Recht zu, im Wege der Gesetzgebung einheitliche Normen für die Konstruktion und Ausrüstung der für die Landesvertheidigung wichtigen Eisenbahnen aufzustellen.

ARTIKEL 47. Den Anforderungen der Behörden des Reichs in Betreff der Benutzung der Eisenbahnen sum Zweck der Vertheidigung Deutschlands haben sämmtliche Eisenbahnverwaltungen unweigerlich Folge zu leisten. Insbesondere ist das Militair und alles Kriegsmaterial zu gleichen ermässigten Sätzen zu befördern.

VIII. POST- UND TELEGRAPHENWESEN.

ARTIKEL 48. Das Postwesen und das Telegraphenwesen werden für das gesammte Gebiet des Deutschen Reichs als einheitliche Staatsverkehrs-Anstalten eingerichtet und verwaltet.

Die im Artikel 4. vorgesehene Gesetzgebung des Reichs in Post- und Telegraphen-Angelegenheiten erstreckt sich nicht auf diejenigen Gegenstände, deren Regelung nach den in der Norddeutschen Post- und Telegraphen-Verwaltung massgebend gewesenen Grundsätzen der reglementarischen Festsetzung oder administrativen Anordnung überlassen ist.

ARTIKEL 49. Die Einnahmen des Post- und Telegraphenwesens sind für das ganze Reich gemeinschaftlich. Die Ausgaben werden aus den gemeinschaftlichen Einnahmen bestritten. Die Ueberschüsse fliessen in die Reichskasse (Abschnitt XII.).

ARTIKEL 50. Dem Kaiser gehört die obere Leitung der Post- und Telegraphenverwaltung an. Die von ihm bestellten Behörden haben die Pflicht und das Recht, dafür zu sorgen, dass Einheit in der Organisation der Verwaltung und im Betriebe des Dienstes, sowie in der Qualifikation der Beamten hergestellt und erhalten wird.

Dem Kaiser steht der Erlass der reglementarischen Festsetzungen und allgemeinen administrativen Anordnungen, sowie die ausschliessliche Wahrnehmung der Beziehungen zu anderen Post- und Telegraphenverwaltungen zu.

Sämmtliche Beamte der Post- und Telegraphenverwaltung sind verpflichtet, den Kaiserlichen Anordnungen Folge zu leisten. Diese Verpflichtung ist in den Diensteid aufzunehmen.

Die Anstellung der bei den Verwaltungsbehörden der Post und Telegraphie in den verschiedenen Bezirken erforderlichen oberen Beamten (z. B. der Direktoren, Räthe, Ober-Inspektoren), ferner die Anstellung der zur Wahrnehmung des Aufsichts- u. s. w. Dienstes in den einzelnen Bezirken als Organe der erwähnten Behörden fungirenden Post- und Telegraphenbeamten (z. B. Inspektoren, Kontroleure) geht für das ganze Gebiet des Deutschen Reichs vom Kaiser aus, welchem diese Beamten den Diensteid Leisten. Den einzelnen Landesregierungen wird von den in Rede stehenden Ernennungen, soweit dieselben ihre Gebiete betreffen, Behufs der landesherrlichen Bestätigung und Publikation rechtzeitig Mittheilung gemacht werden.

Die anderen bei den Verwaltungsbehörden der Post und Telegraphie erforderlichen Beamten, sowie alle für den lokalen und technischen Betrieb bestimmten, mithin bei den eigentlichen Betriebsstellen fungirenden Beamten u. s. w. werden von den betreffenden Landesregierungen angestellt.

Wo eine selbstständige Landespost- resp. Telegraphenverwaltung nicht besteht, entscheiden die Bestimmungen der besonderen Verträge.

ARTIKEL 51. Bei Ueberweisung des Ueberschusses der Postverwaltung für allgemeine Reichszwecke (Art. 49.) soll, in Betracht der bisherigen Verschiedenheit der von den Landes-Postverwaltungen der einzelnen Gebiete erzielten Reineinnahmen, zum Zwecke einer entsprechenden Ausgleichung während der unten festgesetzten Uebergangszeit folgendes Verfahren beobachtet werden.

Aus den Postüberschüssen, welche in den einzelnen Postbezirken während der fünf Jahre 1861. bis 1865. aufgekommen sind, wird ein durchschnittlicher Jahresüberschuss berechnet, und der Antheil, welchen jeder einzelne Postbezirk an dem für das gesammte Gebiet des Reichs sich darnach herausstellenden Postüberschusse gehabt hat, nach Prozenten festgestellt.

Nach Massgabe des auf diese Weise festgestellten Verhältnisses werden den einzelnen Staaten während der auf ihren Eintritt in die Reichs-Postverwaltung folgenden acht Jahre die sich für sie aus den im Reiche aufkommenden Postüberschüssen ergebenden Quoten auf ihre sonstigen Beiträge zu Reichszwecken zu Gute gerechnet.

Nach Ablauf der acht Jahre hört jene Unterscheidung auf, und fliessen die Postüberschüsse in ungetheilter Aufrechnung nach dem im Artikel 49. enthaltenen Grundsatz der Reichskasse zu.

Von der während der vorgedachten acht Jahre für die Hansestädte sich herausstellenden Quote des Postüberschusses wird alljährlich vorweg die Hälfte dem Kaiser zur Disposition gestellt zu dem Zwecke, daraus zunächst die Kosten für die Herstellung normaler Posteinrichtungen in den Hansestädten zu bestreiten.

ARTIKEL 52. Die Bestimmungen in den vorstehenden Artikeln 48. bis 51. finden auf Bayern und Württemberg keine Anwendung. An ihrer Stelle gelten für beide Bundesstaaten folgende Bestimmungen.

Dem Reiche ausschliesslich steht die Gesetzgebung über die Vorrechte der Post und Telegraphie, über die rechtlichen Verhältnisse beider Anstalten zum Publikum, über die Portofreiheiten und das Posttaxwesen, jedoch ausschliesslich der reglementarischen und Tarif-Bestimmungen für den internen verkehr innerhalb Bayerns, beziehungsweise Württembergs, sowie, unter gleicher Beschrankung, die Feststellung der Gebühren für die telegraphische Korrespondenz zu.

Ebenso steht dem Reiche die Regelung des Post- und Telegraphenverkehrs mit dem Auslande zu, ausgenommen den eigenen unmittelbaren Verkehr Bayerns, beziehungsweise Württembergs mit seinen dem Reiche nicht angehörenden Nachbarstaaten, wegen dessen Regelung es bei der Bestimmung im Artikel 49. des Postvertrages vom 23. November 1867. bewendet.

An den zur Reichskasse fliessenden Einnahmen des Post- und Telegraphenwesens haben Bayern und Württemberg keinen Theil.

IX. Marine und Schiffahrt.

Artikel 53. Die Kriegsmarine des Reichs ist eine einheitliche unter dem Oberbefehl des Kaisers. Die Organisation und Zusammensetzung derselben liegt dem Kaiser ob, welcher die Offiziere und Beamten der Marine ernennt, und für welchen dieselben nebst den Mannschaften eidlich in Pflicht zu nehmen sind.

Der Kieler Hafen und der Jadehafen sind Reichskriegshäfen.

Der zur Gründung und Erhaltung der Kriegsflotte und der damit zusammenhängenden Anstalten erforderliche Aufwand wird aus der Reichskasse bestritten.

Die gesammte seemännische Bevölkerung des Reichs, einschliesslich des Maschinenpersonals und der Schiffshandwerker, ist vom Dienste im Landheere befreit, dagegen zum Dienste in der Kaiserlichen Marine verpflichtet.

Artikel 54. Die Kauffahrteischiffe aller Bundesstaaten bilden eine einheitliche Handelsmarine.

Das Reich hat das Verfahren zur Ermittelung der Ladungsfähigkeit der Seeschiffe zu bestimmen, die Ausstellung der Messbriefe, sowie der Schiffscertifikate zu regeln und die Bedingungen festzustellen, von welchen die Erlaubniss zur Führung eines Seeschiffes abhängig ist.

In den Seehäfen und auf allen natürlichen und künstlichen Wasserstrassen der einzelnen Bundesstaaten werden die Kauffahrteischiffe sämmtlicher Bundesstaaten gleichmässig zugelassen und behandelt. Die Abgaben, welche in den Seehäfen von den Seeschiffen oder deren Ladungen für die Benutzung der Schiffahrtsanstalten erhoben werden, dürfen die zur Unterhaltung und gewöhnlichen Herstellung dieser Anstalten erforderlichen Kosten nicht übersteigen.

Auf allen natürlichen Wasserstrassen dürfen Abgaben nur für die

Benutzung besonderer Anstalten, die zur Erleichterung des Verkehrs bestimmt sind, erhoben werden. Diese Abgaben, sowie die Abgaben für die Befahrung solcher künstlichen Wasserstrassen, welche Staatseigenthum sind, dürfen die zur Unterhaltung und gewöhnlichen Herstellung der Anstalten und Anlagen erforderlichen Kosten nicht übersteigen. Auf die Flösserei finden diese Bestimmungen insoweit Anwendung, als dieselbe auf schiffbaren Wasserstrassen betrieben wird.

Auf fremde Schiffe oder deren Ladungen andere oder höhere Abgaben zu legen, als von den Schiffen der Bundesstaaten oder deren Ladungen zu entrichten sind, steht keinem Einzelstaate, sondern nur dem Reiche zu.

ARTIKEL 55. Die Flagge der Kriegs- und Handelsmarine ist schwarzweissroth.

X. KONSULATWESEN.

ARTIKEL 56. Das gesammte Konsulatwesen des Deutschen Reichs steht unter der Aufsicht des Kaisers, welcher die Konsuln, nach Vernehmung des Ausschusses des Bundesrathes für Handel und Verkehr, anstellt.

In dem Amtsbezirk der Deutschen Konsuln dürfen neue Landeskonsulate nicht errichtet werden. Die Deutschen Konsuln üben für die in ihrem Bezirk nicht vertretenen Bundesstaaten die Funktionen eines Landeskonsuls aus. Die sämmtlichen bestehenden Landeskonsulate werden aufgehoben, sobald die Organisation der Deutschen Konsulate dergestalt vollendet ist, dass die Vertretung der Einzelinteressen aller Bundesstaaten als durch die Deutschen Konsulate gesichert von dem Bundesrathe anerkannt wird.

XI. REICHSKRIEGSWESEN.

ARTIKEL 57. Jeder Deutsche ist wehrpflichtig und kann sich in Ausübung dieser Pflicht nicht vertreten lassen.

ARTIKEL 58. Die Kosten und Lasten des gesammten Kriegswesens des Reichs sind von allen Bundesstaaten und ihren Angehörigen gleichmässig zu tragen, so dass weder Bevorzugungen, noch Prägravationen einzelner Staaten oder Klassen grundsätzlich zulässig sind. Wo die gleiche Vertheilung der lasten sich *in natura* nicht herstellen lässt, ohne die öffentliche Wohlfahrt zu schädigen, ist die Ausgleichung nach den Grundsätzen, der Gerechtigkeit im Wege der Gesetzgebung festzustellen.

ARTIKEL 59. Jeder wehrfähige Deutsche gehört sieben Jahre lang, in der Regel vom vollendeten zwanzigsten bis zum beginnenden achtundzwanzigsten Lebensjahre, dem stehenden Heere — und zwar die ersten drei Jahre bei den Fahnen, die letzten vier Jahre in der Reserve — die folgenden fünf Lebensjahre der Landwehr ersten Aufgebots und sodann bis zum 31. März desjenigen Kalenderjahres, in welchem das neununddreissigste Lebensjahr vollendet wird, der Landwehr zweiten Aufgebots an. In denjenigen Bundesstaaten, in denen bisher eine längere als zwölfjährige Gesammtdienstzeit gesetzlich war, findet die allmählige Herabsetzung der Verpflichtung nur in dem Maasse statt, als dies die Rücksicht auf die Kriegsbereitschaft des Reichsheeres zulässt.

In Bezug auf die Auswanderung der Reservisten sollen lediglich Diejenigen Bestimmungen massgebend sein, welche für die Auswanderung der Landwehrmänner gelten.

ARTIKEL 60. Die Friedens-Präsenzstärke des Deutschen Heeres wird bis zum 31. Dezember 1871. auf Ein Prozent der Bevölkerung von 1867. normirt, und wird *pro rata* derselben von den einzelnen Bundesstaaten gestellt. Für die spätere Zeit wird die Friedens-Präsenzstärke des Heeres im Wege der Reichsgesetzgebung festgestellt.

ARTIKEL 61. Nach Publikation dieser Verfassung ist in dem ganzen Reiche die gesammte Preussische Militairgesetzgebung ungesäumt einzuführen, sowohl die Gesetze selbst, als die zu ihrer Ausführung, Erläuterung, oder Ergänzung erlassenen Reglements, Instruktionen und Reskripte, namentlich also das Militair-Strafgesetzbuch vom 3. April 1845., die Militair-Strafgerichtsordnung vom 3. April 1845., die Verordung über die Ehrengerichte vom 20. Juli 1843., die Bestimmungen über Aushebung, Dienstzeit, Servis- und Verpflegungswesen, Einquartierung, Ersatz von Flurbeschädigungen, Mobilmachung u. s. w. für Krieg und Frieden. Die Militair-Kirchenordnung ist jedoch ausgeschlossen.

Nach gleichmässiger Durchführung der Kriegsorganisation des Deutschen Heeres wird ein umfassendes Reichs-Militairgesetz dem Reichstage und dem Bundesrathe zur verfassungsmässigen Beschlussfassung vorgelegt werden.

ARTIKEL 62. Zur Bestreitung des Aufwandes für das gesammte Deutsche Heer und die zu demselben gehörigen Einrichtungen sind bis zum 31. Dezember 1871. dem Kaiser jährlich sovielmal 225

Thaler, in Worten zweihundert fünf und zwanzig Thaler, als die Kopfzahl der Friedensstärke des Heeres nach Artikel 60. beträgt, zur Verfügung zu stellen. Vergl. Abschnitt XII.

Nach dem 31. Dezember 1871. müssen diese Beiträge von den einzelnen Staaten des Bundes zur Reichskasse fortgezahlt werden. Zur Berechnung derselben wird die im Artikel 60. interimistisch festgestellte Friedens-Präsenzstärke so lange festgehalten, bis sie durch ein Reichsgesetz abgeändert ist.

Die Verausgabung dieser Summe für das gesammte Reichsheer und dessen Einrichtungen wird durch das Etatsgesetz festgestellt.

Bei der Feststellung des Militair-Ausgabe-Etats wird die auf Grundlage dieser Verfassung gesetzlich feststehende Organisation des Reichsheeres zu Grunde gelegt.

ARTIKEL 63. Die gesammte Landmacht des Reichs wird ein einheitliches Heer bilden, welches in Krieg und Frieden unter dem Befehle des Kaisers steht.

Die Regimenter &c. führen fortlaufende Nummern durch das ganze Deutsche Heer. Für die Bekleidung sind die Grundfarben und der Schnitt der Königlich Preussischen Armee massgebend. Dem Betreffenden Kontingentsherrn bleibt es überlassen, die äusseren Abzeichen (Kokarden &c.) zu bestimmen.

Der Kaiser hat die Pflicht und das Recht, dafür Sorge zu tragen, dass innerhalb des Deutschen Heeres alle Truppentheile vollzählig und kriegstüchtig vorhanden sind und dass Einheit in der Organisation und Formation, in Berwaffnung und Kommando, in der Ausbildung der Mannschaften, sowie in der Qualifikation der Offiziere hergestellt und erhalten wird. Zu diesem Behufe ist der Kaiser berechtigt, sich jederzeit durch Inspektionen von der Verfassung der einzelnen Kontingente zu überzeugen und die Abstellung der dabei vorgefundenen Mängel anzuordnen.

Der Kaiser bestimmt den Präsenzstand, die Gliederung und Eintheilung der Kontingente des Reichsheeres, sowie die Organisation der Landwehr, und hat das Recht, innerhalb des Bundesgebietes die Garnisonen zu bestimmen, sowie die kriegsbereite Aufstellung eines jeden Theils des Reichsheeres anzuordnen.

Behufs Erhaltung der unentbehrlichen Einheit in der Administration, Verpflegung, Bewaffnung und Ausrüstung aller Truppentheile des Deutschen Heeres sind die bezüglichen künftig ergehenden Anordnungen für die Preussische Armee den Kommandeuren der

übrigen Kontingente, durch den Artikel 8. Nr. 1. bezeichneten Ausschuss für das Landheer und die Festungen, zur Nachachtung in geeigneter Weise mitzutheilen.

ARTIKEL 64. Alle Deutsche Truppen sind verpflichet, den Befehlen des Kaisers unbedingte Folge zu leisten. Diese Verpflichtung ist in den Fahneneid aufzunehmen.

Der Höchstkommandirende eines Kontingents, sowie alle Offiziere, welche Truppen mehr als eines Kontingents befehligen, und alle Festungskommandanten werden von dem Kaiser ernannt. Die von Demselben ernannten Offiziere leisten Ihm den Fahneneid. Bei Generalen und den Generalstellungen versehenden Offizieren innerhalb des Kontingents ist die Ernennung von der jedesmaligen Zustimmung des Kaisers abhängig zu machen.

Der Kaiser ist berechtigt, Behufs Versetzung mit oder ohne Beförderung für die von Ihm im Reichsdienste, sei es im Preussischen Heere, oder in anderen Kontingenten zu besetzenden Stellen aus den Offizieren aller Kontingente des Reichsheeres zu wählen.

ARTIKEL 65. Das Recht, Festungen innerhalb des Bundesgebietes anzulegen, steht dem Kaiser zu, welcher die Bewilligung der dazu erforderlichen Mittel, soweit das Ordinarium sie nicht gewährt, nach Abschnitt XII. beantragt.

ARTIKEL 66. Wo nicht besondere Konventionen ein Anderes bestimmen, ernennen die Bundesfürsten, beziehentlich die Senate die Offiziere ihrer Kontingente, mit der Einschränkung des Artikels 64. Sie sind Chefs aller ihren Gebieten angehörenden Truppentheile und geniessen die damit verbundenen Ehren. Sie haben namentlich das Recht der Inspizirung zu jeder Zeit und erhalten, ausser den regelmässigen Rapporten und Meldungen über vorkommende Veränderungen, Behufs der nöthigen landesherrlichen Publikation, rechtzeitige Mittheilung von den die betreffenden Truppentheile berührenden Avancements und Ernennungen.

Auch steht ihnen das Recht zu, zu polizeilichen Zwecken nicht blos ihre eigenen Truppen zu verwenden, sondern auch alle anderen Truppentheile des Reichsheeres, welche in ihren Ländergebieten dislocirt sind, zu requiriren.

ARTIKEL 67. Ersparnisse an dem Militair-Etat fallen unter keinen Umständen einer einzelnen Regierung, sondern jederzeit der Reichskasse zu.

ARTIKEL 68. Der Kaiser kann, wenn die öffentliche Sicherheit in

dem Bundesgebiete bedroht ist, einen jeden Theil desselben in Kriegszustand erklären. Bis zum Erlass eines die Voraussetzungen, die Form der Verkündigung und die Wirkungen einer solchen Erklärung regelnden Reichsgesetzes gelten dafür die Vorschriften des Preussischen Gesetzes vom 4. Juni 1851. (Gesetz-Samml. für 1851. S. 451 ff.).

SCHLUSSBESTIMMUNG ZUM XI. ABSCHNITT.

Die in diesem Abschnitt enthaltenen Vorschriften kommen in Bayern nach näherer Bestimmung des Bündnissvertrages vom 23. November 1870. (Bundesgesetzbl. 1871. S. 9.) unter III. § 5., in Württemberg nach näherer Bestimmung der Militairkonvention vom. 21./25. November 1870. (Bundesgesetzbl. 1870. S. 658.) zur Anwendung.

XII. REICHSFINANZEN.

ARTIKEL 69. Alle Einnahmen und Ausgaben des Reichs müssen für jedes Jahr veranschlagt und auf den Reichshaushalts-Etat gebracht werden. Letzterer wird vor Beginn des Etatsjahres nach folgenden Grundsätzen durch ein Gesetz festgestellt.

ARTIKEL 70. Zur Bestreitung aller gemeinschaftlichen Ausgaben dienen zunächst die etwaigen Ueberschüsse der Vorjahre, sowie die aus den Zöllen, den gemeinschaftlichen Verbrauchssteuern und aus dem Post- und Telegraphenwesen fliessenden gemeinschaftlichen Einnahmen. Insoweit dieselben durch diese Einnahmen nicht gedeckt werden, sind sie, so lange Reichssteuern nicht eingführt sind, durch Beiträge der einzelnen Bundesstaaten nach Massgabe ihrer Bevölkerung aufzubringen, welche bis zur Höhe des budgetmässigen Betrages durch den Reichskanzler ausgeschrieben werden.

ARTIKEL 71. Die gemeinschaftlichen Ausgaben werden in der Regel für ein Jahr bewilligt, können jedoch in besonderen Fällen auch für eine längere Dauer bewilligt werden.

Während der im Artikel 60. normirten Uebergangszeit ist der nach Titeln geordnete Etat über die Ausgaben für das Heer dem Bundesrathe und dem Reichstage nur zur Kenntnissnahme und zur Erinnerung vorzulegen.

ARTIKEL 72. Ueber die Verwendung aller Einnahmen des Reichs ist durch den Reichskanzler dem Bundesrathe und dem Reichstage zur Entlastung jährlich Rechnung zu legen.

ARTIKEL 73. In Fällen eines ausserordentlichen Bedürfnisses

kann im Wege der Reichsgesetzgebung die Aufnahme einer Anleihe, sowie die Uebernahme einer Garantie zu Lasten des Reichs erfolgen.

SCHLUSSBESTIMMUNG ZUM XIII. ABSCHNITT.

Auf die Ausgaben für das Bayerische Heer finden die Artikel 69. und 71. nur nach Massgabe der in der Schlussbestimmung zum XI. Abschnitt erwähnten Bestimmungen des Vertrages vom 23. November 1870. und der Artikel 72. nur insoweit Anwendung, als dem Bundesrathe und dem Reichstage die Ueberweisung der für das Bayerische Heer erforderlichen Summe an Bayern nachzuweisen ist.

XIII. SCHLICHTUNG VON STREITIGKEITEN UND STRAFBESTIMMUNGEN.

ARTIKEL 74. Jedes Unternehmen gegen die Existenz, die Integrität, die Sicherheit oder die Verfassung des Deutschen Reichs, endlich die Beliedigung des Bundesrathes, des Reichstages, eines Mitgliedes des Bundesrathes oder des Reichstages, einer Behörde oder eines öffentlichen Beamten des Reichs, während dieselben in der Ausübung ihres Berufes begriffen sind oder in Beziehung auf ihren Beruf, durch Wort, Schrift, Druck, Zeichen, bildliche oder andere Darstellung, werden in den einzelnen Bundesstaaten beurtheilt und bestraft nach Massgabe der in den letzteren bestehenden oder künftig in Wirksamkeit tretenden Gesetze, nach welchen eine gleiche gegen den einzelnen Bundesstaat, seine Verfassung, seine Kammern oder Stände, seine Kammer- oder Ständemitglieder, seine Behörden und Beamten begangene Handlung zu richten wäre.

ARTIKEL 75. Für diejenigen in Artikel 74. bezeichneten Unternehmungen gegen das Deutsche Reich, welche, wenn gegen einen der einzelnen Bundesstaaten gerichtet, als Hochverrath oder Landesverrath zu qualifiziren wären, ist das gemeinschaftliche Ober-Appellationsgericht der drei freien und Hansestädte in Lübeck die zuständige Spruchbehörde in erster und letzter Instanz.

Die näheren Bestimmungen über die Zuständigkeit und das Verfahren des Ober-Appellationsgerichts erfolgen im Wege der Reichsgesetzgebung. Bis zum Erlasse eines Reichsgesetzes bewendet es bei der seitherigen Zuständigkeit der Gerichte in den einzelnen Bundesstaaten und den auf das Verfahren dieser Gerichte sich beziehenden Bestimmungen.

ARTIKEL 76. Streitigkeiten zwischen verschiedenen Bundes-

staaten, sofern dieselben nicht privatrechtlicher Natur und daher von den Kompetenten Gerichtsbehörden zu entscheiden sind, werden auf Anrufen des einen Theils von dem Bundesrathe erledigt.

Verfassungsstreitigkeiten in solchen Bundesstaaten, in deren Verfassung nicht eine Behörde zur Entscheidung solcher Streitigkeiten bestimmt ist, hat auf Anrufen eines Theiles der Bundesrath gütlich auszugleichen oder, wenn das nicht gelingt, im Wege der Reichsgesetzgebung zur Erledigung zu bringen.

ARTIKEL 77. Wenn in einem Bundesstaate der Fall einer Justizverweigerung eintritt, und auf gesetzlichen Wegen ausreichende Hülfe nicht erlangt werden kann, so liegt dem Bundesrathe ob, erwiesene, nach der Verfassung und den bestehenden Gesetzen des betreffenden Bundesstaates zu beurtheilende Beschwerden über verweigerte oder gehemmte Rechtspflege anzunehmen, und darauf die gerichtliche Hülfe bei der Bundesregierung, die zu der Beschwerde Anlass gegeben hat, zu bewirken.

XIV. ALLGEMEINE BESTIMMUNGEN.

ARTIKEL 78. Veränderungen der Verfassung erfolgen im Wege der Gesetzgebung. Sie gelten als abgelehnt, wenn sie im Bundesrathe 14 Stimmen gegen sich haben.

Diejenigen Vorschriften der Reichsverfassung, durch welche bestimmte Rechte einzelner Bundesstaaten in deren Verhältniss zur Gesammtheit festgestellt sind, können nur mit Zustimmung des berechtigten Bundesstaates abgeändert werden.

AUSTRIA.

THE FUNDAMENTAL LAWS.

Staatsgrundgesetz über Gemeinsame Angelegenheiten und Art ihrer Behandlung.

21. December 1867 (R. G. B. 146).

Mit Zustimmung der beiden Häuser des Reichsrathes finde Ich in Ergänzung des Staatsgrundgesetzes über die Reichsvertretung nachstehendes Gesetz zu erlassen;

§ 1. Nachfolgende Angelegenheiten werden als den im Reichsrathe vertretenen Königreichen und Ländern und den Ländern der ungarischen Krone gemeinsam erklärt:

a. Die auswärtigen Angelegenheiten mit Einschluss der diplomatischen und commerziellen Vertretung dem Auslande gegenüber, sowie die in Betreff der internationalen Verträge etwa nothwendigen Verfügungen, wobei jedoch die Genehmigung der internationalen Verträge, insoweit eine solche verfassungsmässig nothwendig ist, den Vertretungskörpern der beiden Reichshälften (dem Reichsrathe und dem ungarischen Reichstage) vorbehalten bleibt;

b. das Kriegswesen mit Inbegriff der Kriegsmarine, jedoch mit Ausschluss der Recrutenbewilligung und der Gesetzgebung über die Art und Weise der Erfüllung der Wehrpflicht, der Verfügungen hinsichtlich der Dislocirung und Verpflegung des Heeres, ferner der Regelung der bürgerlichen Verhältnisse und der sich nicht auf den Militärdienst beziehenden Rechte und Verpflichtungen der Mitglieder des Heeres;

c. das Finanzwesen rücksichtlich der gemeinschaftlich zu bestreitenden Auslagen, insbesondere die Festsetzung des diessfälligen Budgets und die Prüfung der darauf bezüglichen Rechnungen.

§ 2. Ausserdem sollen nachfolgende Angelegenheiten zwar nicht gemeinsam verwaltet, jedoch nach gleichen von Zeit zu Zeit zu vereinbarenden Grundsätzen behandelt werden:

1. Die commerziellen Angelegenheiten, speciell die Zollgesetzgebung;

2. die Gesetzgebung über die mit der industriellen Production in enger Verbindung stehenden indirecten Abgaben;

3. die Feststellung des Münzwesens und des Geldfusses;

4. Verfügungen bezüglich jener Eisenbahnlinien, welche das Interesse beider Reichshälften berühren;

5. die Feststellung des Wehrsystems.

§ 3. Die Kosten der gemeinsamen Angelegenheiten (§ 1) sind von beiden Reichstheilen nach einem Verhältnisse zu tragen, welches durch ein vom Kaiser zu sanctionirendes Uebereinkommen der beiderseitigen Vertretungskörper (Reichsrath und Reichstag) von Zeit zu Zeit festgesetzt werden wird. Sollte zwischen beiden Vertretungen kein Uebereinkommen erzielt werden, so bestimmt der Kaiser dieses Verhältniss, JEDOCH NUR FÜR DIE DAUER EINES JAHRES. Die Aufbringung der auf jede der beiden Reichstheile hiernach entfallenden Leistungen ist jedoch ausschliesslich Sache eines jeden Theiles.

Es kann jedoch auch zur Bestreitung der Kosten der gemeinsamen Angelegenheiten ein gemeinsames Anlehen aufgenommen werden, wo dann auch Alles, was den Abschluss des Anlehens und die Modalitäten der Verwendung und Rückzahlung betrifft, gemeinsam zu behandeln ist.

Die Entscheidung über die Frage, ob ein gemeinsames Anlehen aufzunehmen ist, bleibt jedoch der Gesetzgebung jeder der beiden Reichshälften vorbehalten.

§ 4. Die Beitragsleistung zu den Lasten der gegenwärtigen Staatsschuld wird durch ein zwischen beiden Reichshälften zu treffendes Uebereinkommen geregelt.

§ 5. Die Verwaltung der gemeinsamen Angelegenheiten wird durch ein gemeinsames verantwortliches Ministerium besorgt, welchem jedoch nicht gestattet ist, nebst den gemeinsamen Angelegenheiten auch die besonderen Regierungsgeschäfte eines der beiden Reichstheile zu führen.

Die Anordnungen in Betreff der Leitung, Führung und inneren Organisation der gesammten Armee stehen ausschliesslich dem Kaiser zu.

§ 6. Das den Vertretungskörpern beider Reichshälften (dem Reichsrathe und dem ungarischen Reichstage) zustehende Gesetzgebungsrecht wird von denselben, insoweit es sich um die gemeinsamen Angelegenheiten handelt, mittelst zu entsendender Delegationen ausgeübt.

§ 7. Die Delegation des Reichsrathes zählt sechzig Mitglieder, wovon ein Drittheil dem Herrenhause und zwei Drittheile dem Hause der Abgeordneten entnommen werden.

§ 8. Das Herrenhaus hat die auf dasselbe entfallenden zwanzig Mitglieder der Delegation mittelst absoluter Stimmenmehrheit aus seiner Mitte zu wählen.

Die auf das Haus der Abgeordneten entfallenden vierzig Mitglieder werden in der Weise gewählt, dass die Abgeordneten der einzelnen Landtage [1] nach dem nachstehenden Vertheilungsmodus die Delegirten entsenden, wobei ihnen freisteht, dieselben aus ihrer Mitte oder aus dem Plenum des Hauses zu wählen.

Es haben mittelst absoluter Stimmenmehrheit zu wählen die Abgeordneten aus

dem Königreiche Böhmen	10
dem Königreiche Dalmatien	1
dem Königreiche Galizien und Lodomerien mit dem Grossherzogthume Krakau	7
dem Erzherzogthume Oesterreich unter der Enns	3
dem Erzherzogthume Oesterreich ob der Enns	2
dem Herzogthume Salzburg	1
dem Herzogthume Steiermark	2
dem Herzogthume Kärnten	1
dem Herzogthume Krain	1
dem Herzogthume Bukowina	1
der Markgrafschaft Mähren	4
dem Herzogthume Ober- und Nieder-Schlesien	1
der gefürsteten Grafschaft Tirol	2
dem Lande Vorarlberg	1
der Markgrafschaft Istrien	1
der gefürsteten Grafschaft Görz und Gradiska	1
der Stadt Triest mit ihrem Gebiete	1
	40

[1] The Law of April 2, 1873, which established direct elections to the Reichsrath, provided in Art. II. as follows: "Von demselben Zeitpunkte an ist in die Delegation des Reichsraths die nach § 8, Alinea 2 u. 3 und § 9 des Gesetzes vom 21. December 1867 (R. G. B. 146) auf jedes Land entfallende Zahl von Delegirten und Ersatzmännern durch die in dem betreffenden Lande gewählten Mitglieder des Abgeordnetenhauses zu wählen.

§ 9. In gleicher Weise hat jedes der beiden Häuser des Reichsrathes Ersatzmänner der Delegirten zu wählen, deren Anzahl für das Herrenhaus zehn und für das Abgeordnetenhaus zwanzig beträgt.

Die Zahl der aus dem Abgeordnetenhause zu wählenden Ersatzmänner wird auf die aus demselben zu entsendenden Delegirten derart vertheilt, dass auf Einen bis drei Delegirte je Ein Ersatzmann, auf vier und mehr Delegirte je zwei Ersatzmänner entfallen. Die Wahl jedes Ersatzmannes ist gesondert vorzunehmen.

§ 10. Die Wahl der Delegirten und ihrer Ersatzmänner wird von den beiden Häusern des Reichsrathes alljährlich erneuert.

Bis dahin verbleiben die Delegirten und Ersatzmänner in ihrer Function.

Die abgetretenen Mitglieder der Delegation können in dieselbe wieder gewählt werden.

§ 11. Die Delegationen werden alljährlich vom Kaiser einberufen; der Versammlungsort wird vom Kaiser bestimmt.

§ 12. Die Delegation des Reichsrathes wählt aus ihren Mitgliedern den Präsidenten und Vicepräsidenten, sowie auch die Schriftführer und übrigen Functionäre.

§ 13. Der Wirkungskreis der Delegationen umfasst alle Gegenstände, welche die gemeinsamen Angelegenheiten betreffen.

Andere Gegenstände sind von der Wirksamkeit der Delegationen ausgeschlossen.

§ 14. Regierungsvorlagen gelangen durch das gemeinsame Ministerium an jede der beiden Delegationen abgesondert.

Auch steht jeder Delegation das Recht zu, in Gegenständen ihres Wirkungskreises Vorschläge zu machen.

§ 15. Zu allen Gesetzen in Angelegenheiten des Wirkungskreises der Delegationen ist die Uebereinstimmung beider Delegationen oder bei mangelnder Uebereinstimmung der in einer gemeinschaftlichen Plenarsitzung beider Delegationen gefasste zustimmende Beschluss und in jedem Falle die Sanction des Kaisers erforderlich.

§ 16. Das Recht, das gemeinsame Ministerium zur Verantwortung zu ziehen, wird von den Delegationen geübt.

Bei Verletzung eines für die gemeinsamen Angelegenheiten bestehenden verfassungsmässigen Gesetzes kann jede Delegation einen der anderen Delegation mitzutheilenden Antrag auf Anklage des gemeinsamen Ministeriums oder eines einselnen Mitgliedes desselben stellen.

Die Anklage ist rechtskräftig, wenn sie von jeder Delegation abgesondert oder in einer gemeinschaftlichen Plenarsitzung beider Delegationen beschlossen wird.

§ 17. Jede Delegation schlägt aus den unabhängigen und gegetzkundigen Staatsbürgern jener Länder, welche sie vertritt, jedoch nicht aus ihrer Mitte, vierundzwanzig Richter vor, wovon die andere Delegation zwölf verwerfen kann. Auch der Angeklagte, oder wenn der Angeklagten mehrere sind, alle gemeinschaftlich haben das Recht zwölf der Vorgeschlagenen abzulehnen, so, dass jene derart durch den von der einen und anderen Delegation Vorgeschlagenen gleich viele abgelehnt werden.

Die hiernach übrig bleibenden Richter bilden den Gerichtshof für den vorliegenden Process.

§ 18. Ein eigenes Gesetz über die Verantwortlichkeit des gemeinsamen Ministeriums wird die näheren Bestimmungen über die Anklage, das Verfahren und das Erkenntniss feststellen.

§ 19. Jede der beiden Delegationen verhandelt, berathet und beschliesst für sich in abgesonderten Sitzungen.

Den Ausnahmsfall enthält der § 31.

§ 20. Zur Beschlussfähigkeit der Delegation des Reichsrathes ist ausser dem Vorsitzenden die Anwesenheit von wenigstens dreissig Mitgliedern und zur Giltigkeit eines Beschlusses die absolute Stimmenmehrheit der Anwesenden erforderlich.

§ 21. Die reichsräthlichen Delegirten und Ersatzmänner haben von ihren Wählern keine Instructionen anzunehmen.

§ 22. Die Delegirten des Reichsrathes haben ihr Stimmrecht persönlich auszuüben; wann ein ersatzmann einzutreten hat, bestimmt der § 25.

§ 23. Die Delegirten des Reichsrathes geniessen in dieser Eigenschaft die nämliche Unverletzlichkeit und Unverantwortlichkeit, welche ihnen als Mitglieder des Reichsrathes kraft des § 16 des Grundgesetzes über die Reichsvertretung zusteht.

Die in diesem Paragraphe dem betreffenden Hause eingeräumten Befugnisse kommen, insoferne nicht der Reichsrath gleichzeitig versammelt ist, rücksichtlich der Delegirten der Delegation zu.

§ 24. Der Austritt aus dem Reichsrathe hat auch den Austritt aus der Delegation zur Folge.

§ 25. Kommt ein Mitglied der Delegation oder ein Ersatzmann in Abgang, so ist eine neue Wahl vorzunehmen.

Ist der Reichsrath nicht versammelt, so hat an die Stelle des abgängigen Delegirten dessen Ersatzmann einzutreten.

§ 26. Wird das Abgeordnetenhaus aufgelöst, so erlischt auch die Wirksamkeit der Delegation des Reichsrathes.

Der neu zusammentretende Reichsrath wählt eine neue Delegation.

§ 27. Die Session der Delegation wird durch den Präsidenten derselben nach Beendigung der Geschäfte mit kaiserlicher Genehmigung oder über Auftrag des Kaisers geschlossen.

§ 28. Die Mitglieder des gemeinsamen Ministeriums sind berechtigt, an allen Berathungen der Delegation Theil zu nehmen und ihre Vorlagen persönlich oder durch einen Abgeordneten zu vertreten.

Sie müssen auf Verlangen jedesmal gehört werden.

Die Delegation hat das Recht, an das gemeinsame Ministerium oder an ein einselnes Mitglied desselben Fragen zu richten und von demselben Antwort und Aufklärung zu verlangen, ferner Commissionen zu ernennen, welchen von Seite der Ministerien die erforderliche Information zu geben ist.

§ 29. Die Sitzungen der Delegation sind in der Regel öffentlich.

Ausnahmsweise kann die Oeffentlichkeit ausgeschlossen werden, wenn es vom Präsidenten oder wenigstens von fünf Mitgliedern verlangt und von der Versammlung nach Entfernung der Zuhörer beschlossen wird.

Ein Beschluss kann jedoch nur in öffentlicher Sitzung gefasst werden.

§ 30. Beide Delegationen theilen sich ihre Beschlüsse, sowie erforderlichen Falles deren Motive gegenseitig mit.

Dieser Verkehr findet schriftlich statt auf Seite der Delegation des Reichsrathes in deutscher, auf Seite der Delegation des Reichstages in ungarischer Sprache und beiderseits unter Anschluss einer beglaubigten Uebersetzung in der Sprache der anderen Delegation.

§ 31. Jede Delegation ist berechtigt zu beantragen, dass die Frage durch gemeinschaftliche Abstimmung entschieden werde, und kann dieser Antrag, sobald ein dreimaliger Schriftenwechsel erfolglos geblieben ist, von der anderen Delegation nicht abgelehnt werden.

Die beiderseitigen Präsidenten vereinbaren Ort und Zeit einer Plenarsitzung beider Delegationen zum Zwecke der gemeinschaftlichen Abstimmung.

§ 32. In den Plenarsitzungen präsidiren die Präsidenten der Delegation abwechselnd.

Durch das Los wird entschieden, welcher der beiden Präsidenten das erste Mal zu präsidiren hat. In allen folgenden Sessionen präsidirt der ersten Plenarversammlung der Präsident jener Delegation deren Präsident der unmittelbar vorhergegangenen nicht vorgesessen hat.

§ 33. Zur Beschlussfähigkeit der Plenarversammlung ist die Anwesenheit von mindestens zwei Drittheilen der Mitglieder jeder Delegation erforderlich.

Der Beschluss wird mit absoluter Mehrheit der Stimmen gefasst.

Sind auf Seite der einen Delegation mehr Mitglieder anwesend als auf Seite der anderen, so haben sich auf Seite der in der Mehrzahl anwesenden Delegation so viele Mitglieder der Abstimmung zu enthalten, als zur Herstellung der Gleichheit der Zahl der beiderseits Stimmenden entfallen müssen.

Wer sich der Abstimmung zu enthalten hat, wird durch das Los bestimmt.

§ 34. Die Plenarsitzungen der beiden Delegationen sind öffentlich.

Das Protokoll wird in beiden Sprachen durch die beiderseitigen Schriftführer geführt und gemeinsam beglaubigt.

§ 35. Die näheren Bestimmungen über den Geschäftsgang der Delegation des Reichsrathes werden durch die Geschäftsordnung geregelt, deren Feststellung durch die Delegation zu erfolgen hat.

§ 36. Die Vereinbarung in Betreff jener Gegenstände, welche zwar nicht als gemeinsame behandelt, jedoch nach gemeinsamen Grundsätzen geregelt werden sollen, erfolgt entweder dadurch, dass die verantwortlichen Ministerien im gemeinschaftlichen Einvernehmen einen Gesetzentwurf ausarbeiten und den betreffenden Vertretungskörpern beider Theile zur Beschlussfassung vorlegen und die übereinstimmenden Bestimmungen beider Vertretungen dem Kaiser zur Sanction vorgelegt werden, oder dass die beiden Vertretungskörper jeder aus seiner Mitte eine gleich grosse Deputation wählen, welche unter Einflussnahme der betreffenden Ministerien einen Vorschlag ausarbeiten, welcher Vorschlag dann durch die Ministerien jedem Vertretungskörper mitgetheilt, von denselben ordnungsmässig behandelt und die übereinstimmenden Beschlüsse beider Vertretungen dem Kaiser zur Sanction unterbreitet werden.

Der zweite Vorgang ist speciell bei der Vereinbarung über das Beitragsverhältniss zu den Kosten der gemeinsamen Angelegenheiten einzuhalten.

§ 37. Dieses Gesetz tritt mit dem Gesetze, betreffend die Abänderung des Grundgesetzes über die Reichsvertretung vom 26. Februar 1861, dann mit den Staatsgrundgesetzen über die allgemeinen Rechte der Staatsbürger, über die Regierungs- und Vollzugsgewalt, über die richterliche Gewalt und über die Einsetzung eines Reichsgerichtes zugleich in Wirksamkeit.

Staatsgrundgesetz über die Reichsvertretung.

21. December 1867 (R. G. B. 141).

(As amended by the Laws of April 2, 1873, and November 12, 1886.)

Mit Zustimmung der beiden Häuser des Reichsrathes finde Ich das Grundgesetz über die Reichsvertretung vom 26. Februar, 1861, abzuändern und dasselbe hat zu lauten, wie folgt: —

§ 1. Zur gemeinsamen Vertretung der Königreiche Böhmen, Dalmatien, Galizien und Lodomerien mit dem Grossherzogthume Krakau, des Erzherzogthumes Oesterreich unter und ob der Enns, der Herzogthümer Salzburg, Steiermark, Kärnthen, Krain und Bukowina, der Markgrafschaft Mähren, des Herzogthumes Ober- und Nieder-Schlesien, der gefürsteten Grafschaft Tirol und des Landes Vorarlberg, der Markgrafschaft Istrien, der gefürsteten Grafschaft Görz und Gradiska und der Stadt Triest mit ihrem Gebiete ist der Reichsrath berufen. Der Reichsrath besteht aus dem Herrenhause und dem Hause der Abgeordneten.

Niemand kann gleichzeitig Mitglied beider Häuser sein.

§ 2. Mitglieder des Herrenhauses sind durch Geburt die grossjährigen Prinzen des kaiserlichen Hauses.

§ 3. Erbliche Mitglieder des Herrenhauses sind die grossjährigen Häupter jener inländischen Adelsgeschlechter, welche in den durch den Reichsrath vertretenen Königreichen und Ländern durch ausgedehnten Grundbesitz hervorragen und welchen der Kaiser die erbliche Reichsrathswürde verleiht.

§ 4. Mitglieder des Herrenhauses vermöge ihrer hohen Kirchenwürde in den durch den Reichsrath vertretenen Königreichen und Ländern sind alle Erbzischöfe und jene Bischöfe, welchen fürstlicher Rang zukommt.

§ 5. Dem Kaiser bleibt vorbehalten, aus den im Reichsrathe vertretenen Königreichen und Ländern ausgezeichnete Männer, welche sich um den Staat oder Kirche, Wissenschaft oder Kunst verdient gemacht haben, als Mitglieder auf Lebensdauer in das Herrenhaus zu berufen.

§ 6.[1] In das Haus der Abgeordneten kommen durch Wahl 353 Mitglieder, und zwar in der für die einselnen Königreiche und Länder auf folgende Art festgesetzten Zahl: —

für das Königreich Böhmen	92
für das Königreich Dalmatien	9
für das Königreich Galizien u. Lodomerien mit dem Grossherzogthume Krakau.	63
für das Erzherzogthum Oesterreich unter der Enns	37
für das Erzherzogthum Oesterreich ob der Enns .	17
für das Herzogthum Salzburg	5
für das Herzogthum Steiermark	23
für das Herzogthum Kärnthen	9
für das Herzogthum Krain	10
für das Herzogthum Bukowina	9
für die Markgrafschaft Mähren	36
für das Herzogthum Ober- u. Nieder-Schlesien .	10
für die gefürstete Grafschaft Tirol	18
für das Land Vorarlberg	3
für die Markgrafshaft Istrien	4
für die gefürstete Grafschaft Görz und Gradiska .	4
für die Stadt Triest mit ihrem Gebiete . . .	4

§ 7.[2] A. Die für jedes Land festgesetzte Zahl der Mitglieder wird unter die in den Landesordnungen enthaltenen Wählerclassen

a. des grossen (landtäflichen, lehentäflichen) Grundbesitzes, der Höchstbesteuerten in Dalmatien, des adeligen grossen Grundbesitzes sammt den im. § 3 I der Landesordnung bezeichneten Personen in Tirol;

b. der Städte (Städte — Märkte — Industrialorte — Orte);

c. der Handels- und Gewerbekammern und

d. der Landgemeinden

vertheilt und es sind zu wählen:

[1] §§ 6, 7, 15, and 18 were amended by the Law of April 2, 1873, and are printed here in their new form. By the original statute there were two hundred and three members elected by the provincial diets.

[2] See note to § 6.

Im Königreiche Böhmen

23	Mitglieder von der Wählerclasse	a
32	Mitglieder von der Wählerclasse	b
7	Mitglieder von der Wählerclasse	c
30	Mitglieder von der Wählerclasse	d.

Im Königreiche Dalmatien

1	Mitglied von der Wählerclasse	a
2	Mitglieder von der Wählerclasse	b u. c
6	Mitglieder von der Wählerclasse	d.

Im Königreiche Galizien und Lodomerien mit dem Gross-Herzogthume Krakau

20	Mitglieder von der Wählerclasse	a
13	Mitglieder von der Wählerclasse	b
3	Mitglieder von der Wählerclasse	c
27	Mitglieder von der Wählerclasse	d.

Im Erzherzogthume Oesterreich unter der Enns [1]

8	Mitglieder von der Wählerclasse	a
19	Mitglieder von der Wählerclasse	b
2	Mitglieder von der Wählerclasse	c
8	Mitglieder von der Wählerclasse	d.

Im Erzherzogthume Oesterreich ob der Enns

3	Mitglieder von der Wählerclasse	a
6	Mitglieder von der Wählerclasse	b
1	Mitglied von der Wählerclasse	c
7	Mitglieder von der Wählerclasse	d.

Im Herzogthume Salzburg

1	Mitglied von der Wählerclasse	a
2	Mitglieder von der Wählerclasse	b u. c
2	Mitglieder von der Wählerclasse	d.

Im Herzogthume Steiermark

4	Mitglieder von der Wählerclasse	a
8	Mitglieder von der Wählerclasse	b
2	Mitglieder von der Wählerclasse	c
9	Mitglieder von der Wählerclasse	d.

Im Herzogthume Kärnthen

1	Mitglied von der Wählerclasse	a
3	Mitglieder von der Wählerclasse	b

[1] The seats for this province were thus distributed by the Law of Nov. 12, 1886 (R. G. B. 162). Class (b) had previously had 17 seats, and class (d) 10.

1 Mitglied von der Wählerclasse c
4 Mitglieder von der Wählerclasse d.

Im Herzogthume Krain

2 Mitglieder von der Wählerclasse a
3 Mitglieder von der Wählerclasse . . . b u. c
5 Mitglieder von der Wählerclasse d.

Im Herzogthume Bukowina

3 Mitglieder von der Wählerclasse a
2 Mitglieder von der Wählerclasse b
1 Mitglied von der Wählerclasse c
3 Mitglieder von der Wählerclasse d.

In der Markgrafschaft Mähren

9 Mitglieder von der Wählerclasse a
13 Mitglieder von der Wählerclasse b
3 Mitglieder von der Wählerclasse c
11 Mitglieder von der Wählerclasse d.

Im Herzogthume Ober- und Nieder-Schlesien

3 Mitglieder von der Wählerclasse a
4 Mitglieder von der Wählerclasse . . . b u. c
3 Mitglieder von der Wählerclasse d.

In der gefürsteten Grafschaft Tirol

5 Mitglieder von der Wählerclasse a
5 Mitglieder von der Wählerclasse b u. c
8 Mitglieder von der Wählerclasse d.

Im Lande Vorarlberg

1 Mitglied von der Wählerclasse . . . b u. c
2 Mitglieder von der Wählerclasse d.

In der Markgrafschaft Istrien

1 Mitglied von der Wählerclasse a
1 Mitglied von der Wählerclasse b u. c
2 Mitglieder von der Wählerclasse d.

In der gefürsteten Grafschaft Görz und Gradiska

1 Mitglied von der Wählerclasse a
1 Mitglied von der Wählerclasse . . . b u. c
2 Mitglieder von der Wählerclasse d.

In der Stadt Triest mit ihrem Gebiete

8 Mitglieder von der Wählerclasse b
1 Mitglied von der Wählerclasse c

B. Die Vertheilung der in jeder Wählerclasse zu wählenden Mitglieder des Abgeordnetenhauses auf die einzelnen Wahlbezirke und Wahlkörper wird durch die Reichsraths Wahlordnung bestimmt.

C.[1] Die Abgeordneten werden in der Wählerclasse der Landgemeinden durch von den Wahlberechtigten gewählte Wahlmänner und in den anderen Wählerclassen durch die Wahlberechtigten unmittelbar gewählt.

Die Wahl der Wahlmänner und der Abgeordneten hat durch absolute Stimmenmehrheit zu geschehen.

Wird diese Stimmenmehrheit bei einer oder, insoferne noch mehrere Abgeordnete zu wählen sind, auch bei fortgesetzter engerer Wahl nicht erzielt, so entscheidet schliesslich bei gleichgetheilten Stimmen das Los.

D.[1] Wahlberechtigt ist jeder österreichische Staatsbürger, der das 24. Lebensjahr zurückgelegt hat, eigenberechtigt ist und den sonstigen durch die Reichsraths-Wahlordnung festgestellten Erfordernissen entspricht.

E. Wählbar in jedem der im § 6 aufgeführten Länder sind alle Personen männlichen Geschlechtes, welche das österreichische Staatsbürgerrecht seit mindestens drei Jahren besitzen, das 30. Lebensjahr zurückgelegt haben und in einem dieser Länder nach der Bestimmung des Absatzes D wahlberechtigt oder in den Landtag wählbar sind.

§ 8. Die in das Haus der Abgeordneten gewählten öffentlichen Beamten und Functionäre bedürfen zur Ausübung ihres Mandates keines Urlaubes.

§ 9. Der Kaiser ernennt den Präsidenten und den Vicepräsidenten des Herrenhauses aus dessen Mitgliedern für die Dauer der Session. Das Abgeordnetenhaus wählt aus seiner Mitte den Präsidenten und die Vicepräsidenten. Die übrigen Functionäre hat jedes Haus selbst zu wählen.

§ 10. Der Reichsrath wird vom Kaiser alljährlich, womöglich in den Wintermonaten, einberufen.

§ 11. Der Wirkungskreis des Reichsrathes umfasst alle Angelegenheiten, welche sich auf Rechte, Pflichten und Interressen beziehen, die allen im Reichsrathe vertretenen Königreichen und Ländern gemeinschaftlich sind, insoferne dieselben nicht in Folge der Vereinbarung mit den Ländern der ungarischen Krone zwischen diesen

[1] See Law of May 27, 1896, Art. II.

und den übrigen Ländern der Monarchie gemeinsam zu behandeln sein werden.

Es gehören daher zum Wirkungskreise des Reichsrathes:

a. die Prüfung und Genehmigung der Handelsverträge und jener Staatsverträge, die das Reich oder Theile desselben belasten, oder einzelne Bürger verpflichten, oder eine Gebietsänderung der im Reichsrathe vertretenen Königreiche und Länder zur Folge haben;

b. alle Angelegenheiten, welche sich auf die Art und Weise, sowie auf die Ordnung und Dauer der Militärpflicht beziehen, und insbesondere die jährliche Bewilligung der Anzahl der auszuhebenden Mannschaft und die allgemeinen Bestimmungen in Bezug auf Vorspannsleistung, Verpflegung und Einquartierung des Heeres;

c. die Feststellung der Voranschläge des Staatshaushaltes, und insbesondere die jährliche Bewilligung der einzuhebenden Steuern, Abgaben und Gefälle; die Prüfung der Staatsrechnungsabschlüsse und Resultate der Finanzgebarung, die Ertheilung des Absolutoriums; die Aufnahme neuer Anlehen, Convertirung der bestehenden Staatsschulden, die Veräusserung, Umwandlung und Belastung des unbeweglichen Staatsvermögens, die Gesetzgebung über Monopole und Regalien und überhaupt alle Finanzangelegenheiten, welche den im Reichsrathe vertretenen Königreichen und Ländern gemeinsam sind;

d. die Regelung des Geld-, Münz- und Zettelbankwesens, der Zoll- und Handelsangelegenheiten, sowie des Telegraphen-, Post-, Eisenbahn-, Schiffahrts- und sonstigen Reichs-Communicationswesens;

e. die Credit-, Bank-, Privilegien-, und Gewerbsgesetzgebung, mit Ausschluss der Gesetzgebung über die Propinationsrechte, dann die Gesetzgebung über Mass und Gewicht, über Marken- und Musterschutz;

f. die Medicinalgesetzgebung, sowie die Gesetzgebung zum Schutze gegen Epidemien und Viehseuchen;

g. die Gesetzgebung über Staatsbürger- und Heimatsrecht, über Fremdenpolizei und Passwesen, sowie über Volkszählung;

h. über die confessionellen Verhältnisse, über Vereins- und Versammlungsrecht, über die Presse und den Schutz des geistigen Eigenthumes;

i. die Feststellung der Grundsätze des Unterrichtswesens bezüglich der Volksschulen und Gymnasien, dann die Gesetzgebung über die Universitäten;

k. die Strafjustiz- und Polizeistraf-, sowie die Civilrechtsgesetzgebung, mit Ausschluss der Gesetzgebung über die innere Einrichtung der öffentlichen Bücher und über solche Gegenstände, welche auf Grund der Landesordnungen und dieses Grundgesetzes in den Wirkungskreis der Landtage gehören, ferner die Gesetzgebung über Handels- und Wechselrecht, See-, Berg- und Lehenrecht;

l. die Gesetzgebung über die Grundzüge der Organisirung der Gerichts- und Verwaltungsbehörden;

m. die zur Durchführung der Staatsgrundgesetze über die allgemeinen Rechte der Staatsbürger, über das Reichsgericht, über die richterliche, Regierungs- und Vollzugsgewalt zu erlassenden und dort berufenen Gesetze;

n. die Gesetzgebung über jene Gegenstände, welche sich auf Pflichten und Verhältnisse der einzelnen Länder unter einander beziehen;

o. die Gesetzgebung, betreffend die Form der Behandlung der durch die Vereinbarung mit den zur ungarischen Krone gehörigen Ländern als gemeinsam festgestellten Angelegenheiten.

§ 12. Alle übrigen Gegenstände der Gesetzgebung, welche in diesem Gesetze dem Reichsrathe nicht ausdrücklich vorbehalten sind, gehören in den Wirkungskreis der Landtage der im Reichsrathe vertretenen Königreiche und Länder und werden in und mit diesen Landtagen verfassungsmässig erledigt.

Sollte jedoch irgend ein Landtag beschliessen, dass ein oder der andere ihm überlassene Gegenstand der Gesetzgebung im Reichsrathe behandelt und erledigt werde, so übergeht ein solcher Gegenstand für diesen Fall und rücksichtlich des betreffenden Landtages in den Wirkungskreis des Reichsrathes.

§ 13. Gesetzesvorschläge gelangen als Regierungsvorlagen an den Reichsrath. Auch diesem steht das Recht zu, in Gegenständen seines Wirkungskreises Gesetze vorzuschlagen.

Zu jedem Gesetze ist die Übereinstimmung beider Häuser und die Sanction des Kaisers erforderlich.

Kann in einem Finanzgesetze über einzelne Posten desselben oder im Recrutengesetze über die Höhe des auszuhebenden Contingentes trotz wiederholter Berathung keine Uebereinstimmung zwischen beiden Häusern erzielt werden, so gilt die kleinere Ziffer als bewilligt.

§ 14. Wenn sich die dringende Nothwendigkeit solcher Anord-

nungen, zu welchen verfassungsmässig die Zustimmung des Reichsrathes erforderlich ist, zu einer Zeit herausstellt, wo dieser nicht versammelt ist, so können dieselben unter Verantwortung des Gesammtministeriums durch kaiserliche Verordnung erlassen werden, insoferne solche keine Abänderung des Staatsgrundgesetzes bezwecken, keine dauernde Belastung des Staatsschatzes und keine Veräusserung von Staatsgut betreffen. Solche Verordnungen haben provisorische Gesetzeskraft, wenn sie von sämmtlichen Ministern unterzeichnet sind und mit ausdrücklicher Beziehung auf diese Bestimmung des Staatsgrundgesetzes kundgemacht werden.

Die Gesetzeskraft dieser Verordnungen erlischt, wenn die Regierung unterlassen hat, dieselben dem nächsten nach deren Kundmachung zusammentretenden Reichsrathe, und zwar zuvörderst dem Hause der Abgeordneten binnen vier Wochen nach diesem Zusammentritte zur Genehmigung vorzulegen, oder wenn dieselben die Genehmigung eines der beiden Häuser des Reichsrathes nicht erhalten.

Das Gesammtministerium ist dafür verantwortlich, dass solche Verordnungen, sobald sie ihre provisorische Gesetzeskraft verloren haben, sofort ausser Wirksamkeit gesetzt werden.

§ 15.[1] Zu einem giltigen Beschlusse des Reichsrathes ist in dem Hause der Abgeordneten die Anwesenheit von hundert, im Herrenhause von vierzig Mitgliedern und in beiden die absolute Stimmenmehrheit der Anwesenden nothwendig.

Aenderungen in diesen Grundgesetze, sowie in den Staatsgrundgesetzen über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder, über die Einsetzung eines Reichsgerichtes, über die richterliche, sowie über die Ausübung der Regierungs- und der Vollzugsgewalt können nur mit einer Mehrheit von wenigstens zwei Dritteln der Stimmen der Anwesenden, und im Abgeordnetenhause nur bei Anwesenheit von mindestens der Hälfte der Mitglieder giltig beschlossen werden.

§ 16. Die Mitglieder des Hauses der Abgeordneten haben von ihren Wählern keine Instructionen anzunehmen.

Die Mitglieder des Reichsrathes können wegen der in Ausübung ures Berufes geschehenen Abstimmungen niemals, wegen der in die-em Berufe gemachten Aeusserungen aber nur von dem Hause, dem -ie angehören, zur Verantwortung gezogen werden.

[1] See note to § 6.

Kein Mitglied des Reichsrathes darf während der Dauer der Session wegen einer strafbaren Handlung — den Fall der Ergreifung auf frischer That ausgenommen — ohne Zustimmung des Hauses verhaftet oder gerichtlich verfolgt werden.

Selbst in dem Falle der Ergreifung auf frischer That hat das Gericht dem Präsidenten des Hauses sogleich die geschehene Verhaftung bekannt zu geben.

Wenn es das Haus verlangt, muss der Verhaft aufgehoben oder die Verfolgung für die ganze Sitzungsperiode aufgeschoben werden. Dasselbe Recht hat das Haus in Betreff einer Verhaftung oder Untersuchung, welche über ein Mitglied desselben ausserhalb der Sitzungsperiode verhängt worden ist.

§ 17. Alle Mitglieder des Reichsrathes haben ihr Stimmrecht persönlich auszuüben.

§ 18.[1] Die Mitglieder des Hauses der Abgeordneten werden auf die Dauer von sechs Jahren gewählt.

Nach Ablauf dieser Wahlperiode, sowie im Falle der Auflösung des Abgeordnetenhauses erfolgen allgemeine Neuwahlen.

Gewesene Abgeordnete können wiedergewählt werden.

Während der Dauer der Wahlperiode sind Ergänzungswahlen vorzunehmen, wenn ein Mitglied die Wählbarkeit verliert, mit Tod abgeht, das Mandat niederlegt, oder aus sonst einem gesetzlichen Grunde aufhört Mitglied des Reichsrathes zu sein.

§ 19. Die Vertagung des Reichsrathes, sowie die Auflösung des Hauses der Abgeordneten erfolgt über Verfügung des Kaisers. Im Falle der Auflösung wird im Sinne des § 7 neu gewählt.

§ 20. Die Minister und Chefs der Centralstellen sind berechtigt, an allen Berathungen Theil zu nehmen und ihre Vorlagen persönlich oder durch einen Abgeordneten zu vertreten. Jedes Haus kann die Anwesenheit der Minister verlangen. Sie müssen auf Verlangen jedesmal gehört werden. Das Recht, an der Abstimmung Theil zu nehmen, haben sie, insoferne sie Mitglieder eines Hauses sind.

§ 21. Jedes der beiden Häuser des Reichsrathes ist berechtigt, die Minister zu interpelliren, in Allem, was sein Wirkungskreis erfordert, die Verwaltungsacte der Regierung der Prüfung zu unterziehen, von derselben über eingehende Petitionen Auskunft zu verlangen, Commissionen zu ernennen welchen von Seiten der Min-

[1] See note to § 6.

isterien die erforderliche Information zu geben ist, und seinen Ansichten in Form von Adressen oder Resolutionen Ausdruck zu geben.

§ 22. Die Ausübung der Controle der Staatsschuld durch die Vertretungskörper wird durch ein besonderes Gesetz bestimmt.

§ 23. Die Sitzungen beider Häuser des Reichsrathes sind öffentlich.

Jedem Hause steht das Recht zu, ausnahmsweise die Oeffentlichkeit auszuschliessen, wenn es vom Präsidenten oder wenigsteds zehn Mitgliedern verlangt und vom Hause nach Entfernung der Zuhörer beschlossen wird.

§ 24. Die näheren Bestimmungen über den wechselseitigen und den Aussenverkehr beider Häuser enthält das Gesetz in Betreff der Geschäftsordnung des Reichsrathes.

Gesetz.

vom 14. Juni 1896 (R. G. B. 168).

wodurch das

Grundgesetz über die Reichsvertretung vom 21. Dezember 1867, R. G. B. 141, beziehungsweise die Gesetze vom 2. April 1873, R. G. B. 40 und vom. 12. November 1886, R. G. B. 162, abgeändert und ergänzt werden.

Mit Zustimmung der beiden Häuser des Reichsrathes finde Ich anzuordnen, wie folgt:

Artikel 1. Zu den 353 Mitgliedern, welche im Grunde der §§ 6 und 7 des Grundgesetzes über die Reichsvertretung (Gesetze vom 2. April 1873, R. G. B. 40, beziehungsweise vom 12. November 1886, R. G. B. 162) in das Haus der Abgeordneten von den in den Landesordnungen enthaltenen Wählerclassen zu wählen sind, kommen weitere 72 Mitglieder, welche von einer mit e zu bezeichnenden allgemeinen Wählerclasse gewählt werden.

Die für diese Wählerclasse festgesetzte Zahl von Mitgliedern wird auf die einzelnen Königreiche und Länder aufgetheilt, und es sind von dieser Wählerclasse zu wählen:

Im Königreiche Böhmen	18
im Königreiche Dalmatien	2
im Königreiche Galizien und Lodomerien mit dem Grossherzogthume Krakau	15

im Erzherzogthume Oesterreich unter der Enns	9
im Erzherzogthume Oesterreich ob der Enns	3
im Herzogthume Salzburg	1
im Herzogthume Steiermark	4
im Herzogthume Kärnten	1
im Herzogthume Krain	1
im Herzogthume Bukowina	2
in der Markgrafschaft Mähren	7
im Herzogthume Ober- und Niederschlesien	2
in der gefürsteten Grafschaft Tirol	3
im Lande Vorarlberg	1
in der Markgrafschaft Istrien	1
in der gefürsteten Grafschaft Görz und Gradiska	1
in der Stadt Triest mit ihrem Gebiete	1

Die Vertheilung der hiernach zu wählenden Mitglieder des Abgeordnetenhauses auf die einzelnen Wahlbezirke wird durch ein besonderes Gesetz bestimmt.

ARTIKEL 2. Die Absätze C und D des § 7 des Grundgesetzes über die Reichsvertretung (Gesetz vom 2. April, 1873, R. G. B. 40) treten in ihrer gegenwärtigen Fassung ausser Wirksamkeit und haben zu lauten wie folgt:

C. Die Abgeordneten werden in der Wählerclasse der Landgemeinden, dann in den ausschliesslich aus Gerichtsbezirken gebildeten Wahlbezirken der allgemeinen Wählerclasse durch von den Wahlberechtigten gewählte Wahlmänner, in den anderen Wählerclassen, dann in den übrigen Wahlbezirken der allgemeinen Wählerclasse durch die Wahlberechtigten unmittelbar gewählt.

In Ländern jedoch, in welchen durch landesgesetzliche Bestimmungen die unmittelbare Wahl der Landtagsabgeordneten in der Wählerclasse der Landgemeinden festgesetzt wird, sind auch die Mitglieder des Abgeordinetenhauses in der Wählerclasse der Landgemeinden, sowie in sämmtlichen Wahlbezirken der allgemeinen Wählerclasse unmittelbar durch die Wahlberechtigten zu wählen.

Die Wahl der Wahlmänner und der Abgeordneten hat durch absolute Stimmenmehrheit zu geschehen.

Wird diese Stimmenmehrheit bei einer oder, insoferne noch mehrere Abgeordnete zu wählen sind, auch bei fortgesetzter engerer Wahl nicht erzielt, so entscheidet schliesslich bei gleichgetheilten Stimmen das Los.

D. Wahlberechtigt ist jeder österreichische Staatsbürger, der das 24. Lebensjahr zurückgelegt hat, eigenberechtigt ist und den sonstigen durch die Reichsrathswahlordnung, beziehungsweise durch das Gesetz vom 14 Juni 1896 (R. G. B. 169) festgestellten Erfordernissen entspricht.

ARTIKEL 3. Dieses Gesetz tritt gleichzeitig mit dem Gesetze vom 14. Juni 1896, betreffend die Abänderung und Ergänzung der Reichsrathswahlordnung, in Wirksamkeit.

Staatsgrundgesetz über die allgemeinen Rechte Der Staatsbürger.

21. December 1867 (R. G. B. 142).

Mit Zustimmung beider Häuser des Reichsrathes finde Ich das nachstehende Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger zu erlassen und anzuordnen, wie folgt:

ART. 1. Für alle Angehörigen der im Reichsrathe vertretenen Königreiche und Länder besteht ein allgemeines österreichisches Staatsbürgerrecht.

Das Gesetz bestimmt, unter welchen Bedingungen das österreichische Staatsbürgerrecht erworben, ausgeübt und verloren wird.

2. Vor dem Gesetze sind alle Staatsbürger gleich.

3. Die öffentlichen Aemter sind für alle Staatsbürger gleich zugänglich.

Für Ausländer wird der Eintritt in dieselben von der Erwerbung der österreichischen Staatsbürgerschaft abhängig gemacht.

4. Die Freizügigkeit der Person und des Vermögens innerhalb des Staatsgebietes unterliegt keiner Beschränkung.

Allen Staatsbürgern, welche in einer Gemeinde wohnen und daselbst von ihrem Realbesitze, Erwerbe oder Einkommen Steuer entrichten, gebührt das active und passive Wahlrecht zur Gemeindevertretung unter denselben Bedingungen wie den Gemeindeangehörigen.

Die Freiheit der Auswanderung ist von Staatswegen nur durch die Wehrpflicht beschränkt.

Abfahrtsgelder dürfen nur in Anwendung der Reciprocität erhoben werden.

5. Das Eigenthum ist unverletzlich. Eine Enteignung gegen den Willen des Eigenthümers kann nur in den Fällen und in der Art eintreten, welche das Gesetz bestimmt.

3. Der Kaiser ernennt und entlässt die Minister und besetzt über Antrag der betreffenden Minister alle Aemter in allen Zweigen des Staatsdienstes, insoferne nicht das Gesetz ein Anderes verordnet.

4. Der Kaiser verleiht Titel, Orden und sonstige staatliche Auszeichnungen.

5. Der Kaiser führt den Oberbefehl über die bewaffnete Macht, erklärt Krieg und schliesst Frieden.

6. Der Kaiser schliesst die Staatsverträge ab.

Zur Giltigkeit der Handelsverträge und jener Staatsverträge, die das Reich oder Theile desselben belasten oder einzelne Bürger verpflichten, ist die Zustimmung des Reichsrathes erforderlich.

7. Das Münzrecht wird im Namen des Kaisers ausgeübt.

8. Der Kaiser leistet beim Antritte der Regierung in Gegenwart beider Häuser des Reichsrathes das eidliche Gelöbniss: —

"Die Grundgesetze der im Reichsrathe vertretenen Königreiche und Länder unverbrüchlich zu halten und in Uebereinstimmung mit denselben und den allgemeinen Gesetnen zu regieren."

9. Die Minister sind für die Verfassungs- und Gesetzmässigkeit der in die Sphäre ihrer Amtswirksamkeit fallenden Regierungsacte verantwortlich.

Diese Verantwortlichkeit, die Zusammensetzung des über die Ministeranklage erkennenden Gerichtshofes und das Verfahren vor demselben sind durch ein besonderes Gesetz geregelt.[1]

10. Die Kundmachung der Gesetze erfolgt im Namen des Kaisers mit Berufung auf die Zustimmung der verfassungsmässigen Vertretungskörper und unter Mitfertigung eines verantwortlichen Ministers.

11. Die Staatsbehörden sind innerhalb ihres amtlichen Wirkungskreises befugt, auf Grund der Gesetze Verordnungen zu erlassen und Befehle zu ertheilen, und sowohl die Beobachtung dieser letzteren als der gesetzlichen Anordnungen selbst gegenüber den hiezu Verpflichteten zu erzwingen.

Besondere Gesetze regeln das Executionsrecht der Verwaltungsbehörden, sowie die Befugnisse der bewaffneten Macht, die zur Erhaltung der öffentlichen Sicherheit, Ruhe und Ordnung dauernd organisirt ist oder in besonderen Fällen aufgeboten wird.

[1] The first clause of the law on the responsibility of the ministers (25. July 1867, R. G. B. 101) is as follows: "§ 1. Jeder Regierungsact des Kaisers bedorf zu seiner Giltigkeit der Gegenzeichnung eines verantwortlichen Ministers."

14. Die volle Glaubens- und Gewissensfreiheit ist jedermann gewährleistet. Der Genuss der bürgerlichen und politischen Rechte ist von dem Religionsbekenntnisse unabhängig; doch darf den staatsbürgerlichen Pflichten durch das Religionsbekenntniss kein Abbruch geschehen. Niemand kann zu einer kirchlichen Handlung oder zur Theilnahme an einer kirchlichen Feierlichkeit gezwungen werden, insofern er nicht der nach dem Gesetze hierzu berechtigten Gewalt eines Anderen untersteht.

15. Jede gesetzlich anerkannte Kirche und Religionsgesellschaft hat das Recht der gemeinsamen öffentlichen Religionsübung, ordnet und verwaltet ihre inneren Angelegenheiten selbständig, bleibt im Besitze und Genusse ihrer für Cultus-, Unterrichts- und Wohlthätigkeitszwecke bestimmten Anstalten, Stiftungen und Fonde, ist aber wie jede Gesellschaft den allgemeinen Staatsgesetzen unterworfen.

16. Den Anhängern eines gesetzlich nicht anerkannten Religionsbekenntnisses ist die häusliche Religionsübung gestattet, insoferne dieselbe weder rechtswidrig, noch sittenverletzend ist.

17. Die Wissenschaft und ihre Lehre ist frei.

Unterrichts- und Erziehungsanstalten zu gründen und an solchen Unterricht zu ertheilen, ist jeder Staatsbürger berechtigt, der seine Befähigung hiezu in gesetzlicher Weise nachgewiesen hat.

Der häusliche Unterricht unterliegt keiner solchen Beschränkung.

Für den Religionsunterricht in den Schulen ist von der betreffenden Kirche oder Religionsgesellschaft Sorge zu tragen.

Dem Staate steht rücksichtlich des Gesammten Unterrichts- und Erziehungswesens das Recht der obersten Leitung und Aufsicht zu.

18. Es steht jedermann frei, seinen Beruf zu wählen und sich für denselben auszubilden, wie und wo er will.

19. Alle Volksstämme des Staates sind gleichberechtigt, und jeder Volksstamm hat ein unverletzliches Recht auf Wahrung und Pflege seiner Nationalität und Sprache.

Die Gleichberechtigung aller landesüblichen Sprachen in Schule, Amt und öffentlichem Leben wird vom Staate anerkannt.

In den Ländern, in welchen mehrere Volksstämme wohnen, sollen die öffentlichen Unterrichtsanstalten derart eingerichtet sein, dass ohne Anwendung eines Zwanges zur Erlernung einer zweiten Landessprache jeder dieser Volksstämme die erforderlichen Mittel zur Ausbildung in seiner Sprache erhält.

20. Ueber die Zulässigkeit der zeitweiligen und örlichen Suspension der in den Art. 8, 9, 10, 12 und 13 enthaltenen Rechte durch die verantwortliche Regierungsgewalt wird ein besonderes Gesetz bestimmen.

Staatsgrundgesetz über das Reichsgericht.

21. December 1867 (R. G. B. 143).

Mit Zustimmung beider Häuser des Reichsrathes finde Ich nachstehendes Staatsgrundgesetz zu erlassen und anzuordnen, wie folgt:

ART. 1. Zur Entscheidung bei Competenzconflicten und in streitigen Angelegenheiten öffentlichen Rechtes wird für die im Reichsrathe vertretenen Königreiche und Länder ein Reichsgericht eingesetzt.

2. Das Reichsgericht hat endgiltig zu entscheiden bei Competenzconflicten;

a. zwischen Gerichts- und Verwaltungsbehörden über die Frage, ob eine Angelegenheit im Rechts- oder Verwaltungswege auszutragen ist, in den durch das Gesetz bestimmten Fällen;

b. zwischen einer Landesvertretung und den obersten Regierungsbehörden, wenn jede derselben das Verfügungs- oder Entscheidungsrecht in einer administrativen Angelegenheit beansprucht;

c. zwischen den autonomen Landesorganen verschiedener Länder in den ihrer Besorgung und Verwaltung zugewiesenen Angelegenheiten.

3. Dem Reichsgerichte steht ferners die endgiltige Entscheidung zu;

a. über Ansprüche einzelner der im Reichsrathe vertretenen Königreiche und Länder an die Gesammtheit derselben und umgekehrt, dann über Ansprüche eines dieser Königreiche und Länder an ein anderes derselben, endlich über Ansprüche, welche von Gemeinden, Körperschaften oder einzelnen Personen an eines der genannten Königreiche und Länder oder an die Gesammtheit derselben gestellt werden, wenn solche Ansprüche zur Austragung im ordentlichen Rechtswege nicht geeignet sind,

b. über Beschwerden der Staatsbürger wegen Verletzung der ihnen durch die Verfassung gewährleisteten politischen Rechte, nachdem die Angelegenheit im gesetzlich vorgeschriebenen administrativen Wege ausgetragen worden ist.

4. Ueber die Frage, ob die Entscheidung eines Falles dem Reichsgerichte zusteht, erkennt einzig und allein das Reichsgericht selbst; dessen Entscheidungen schliessen jede weitere Berufung, sowie die Betretung des Rechtsweges aus.

Wird eine Angelegenheit vom Reichsgerichte vor den ordentlichen Richter oder vor eine Verwaltungsbehörde gewiesen, so kann die Entscheidung von denselben wegen Incompetenz nicht abgelehnt werden.

5. Das Reichsgericht hat seinen Sitz in Wien und besteht aus dem Präsidenten und seinem Stellvertreter, welche vom Kaiser auf Lebensdauer ernannt werden, dann aus zwölf Mitgliedern und vier Ersatzmännern, welche der Kaiser über Vorschlag des Reichsrathes, und zwar sechs Mitglieder und zwei Ersatzmänner aus den durch das Abgeordnetenhaus, dann sechs Mitglieder und zwei Ersatzmänner aus den von dem Herrenhause vorgeschlagenen Personen ebenfalls auf Lebensdauer ernennt.

Der Vorschlag wird in der Weise erstattet, dass für jede der zu besetzenden Stellen drei sachkundige Männer bezeichnet werden.

6. Ein besonderes Gesetz wird die näheren Bestimmungen über die Organisation des Reichsgerichtes, über das Verfahren vor demselben und über die Vollziehung seiner Entscheidungen und Verfügungen feststellen.

Staatsgrundgesetz, über die richterliche gewalt.

21. December 1867 (R. G. B. 144).

Mit Zustimmung der beiden Häuser des Reichsrathes finde Ich nachstehendes Staatsgrundgesetz über die richterliche Gewalt zu erlassen und anzuordnen, wie folgt: —

Art. 1. Alle Gerichtsbarkeit im Staate wird im Namen des Kaisers ausgeübt.

Die Urtheile und Erkenntnisse werden im Namen des Kaisers ausgefertigt.

2. Die Organisation und Competenz der Gerichte wird durch Gesetze festgestellt.

Ausnahmsgerichte sind nur in den von den Gesetzen im voraus bestimmten Fällen zulässig.

3. Der Wirkungskreis der Militärgerichte wird durch besondere Gesetze bestimmt.

4. Die Gerichtsbarkeit bezüglich der Uebertretungen der Polizei- und der Gefällsstrafgesetze wird durch Gesetze geregelt.

5. Die Richter werden vom Kaiser oder in dessen Namen definitiv und auf Lebensdauer ernnant.

6. Die Richter sind in Ausübung ihres richterlichen Amtes selbständig und unabhängig.

Sie dürfen nur in den vom Gesetze vorgeschriebenen Fällen und nur auf Grund eines förmlichen richterlichen Erkenntnisses ihres Amtes entsetzt werden; die zeitweise Enthebung derselben vom Amte darf nur durch Verfügung des Gerichtsvorstandes oder der höheren Gerichtsbehörde unter gleichzeitiger Verweisung der Sache an das zuständige Gericht; die Versetzung an eine andere Stelle oder in den Ruhestand wider Willen nur durch gerichtlichen Beschluss in den durch das Gesetz bestimmten Fällen und Formen erfolgen.

Diese Bestimmungen finden jedoch auf Uebersetzungen und Versetzungen in den Ruhestand keine Anwendung, welche durch Veränderungen in der Organisation der Gerichte nöthig werden.

7. Die Prüfung der Giltigkeit gehörig kundgemachter Gesetze steht den Gerichten nicht zu. Dagegen haben die Gerichte über die Giltigkeit von Verordnungen im gesetzlichen Instanzenzuge zu entscheiden.

8. Alle richterlichen Beamten haben in ihrem Diensteide auch die unverbrüchliche Beobachtung der Staatsgrundgesetze zu beschwören.

9. Der Staat oder dessen richterliche Beamten können wegen der von den letzteren in Ausübung ihrer amtlichen Wirksamkeit verursachten Rechtsverletzungen ausser den im gerichtlichen Verfahren vorgezeichneten Rechtsmitteln mittelst Klage belangt werden. Dieses Klagerecht wird durch ein besonderes Gesetz geregelt.

10. Die Verhandlungen vor dem erkennenden Richter sind in Civil- und Strafrechts-Angelegenheiten mündlich und öffentlich.

Die Ausnahmen bestimmt das Gesetz. Im Strafverfahren gilt der Anklageprocess.

11. Bei den mit schweren Strafen bedrohten Verbrechen, welche das Gesetz zu bezeichnen hat, sowie bei allen politischen oder durch den Inhalt einer Druckschrift verübten Verbrechen und Vergehen entscheiden Geschworne über die Schuld des Angeklagten.

12. Für die im Reichsrathe vertretenen Königreiche und Länder besteht der oberste Gerichts- und Cassationshof in Wien.

13. Der Kaiser hat das Recht, Amnestie zu ertheilen und die Strafen, welche von den Gerichten ausgesprochen wurden, zu erlassen oder zu mildern, sowie die Rechtsfolgen von Verurtheilungen nachzusehen, mit Vorbehalt der im Gesetze über die Verantwortlichkeit der Minister enthaltenen Beschränkungen.

Die Regelung des Rechtes anzuordnen, dass wegen einer strafbaren Handlung ein strafgerichtliches Verfahren nicht eingeleitet oder das eingeleitete Strafverfahren wieder eingestellt werde, bleibt den Vorschriften der Strafprocess-Ordnung vorbehalten.

14. Die Rechtspflege wird von der Verwaltung in allen Instanzen getrennt.

15. In allen Fällen, wo eine Verwaltungsbehörde nach den bestehenden oder künftig zu erlassenden Gesetzen über einander widerstreitende Ansprüche von Privatpersonen zu entscheiden hat, steht es dem durch diese Entscheidung in seinen Privatrechten Benachtheiligten frei, Abhilfe gegen die andere Partei im ordentlichen Rechtswege zu suchen.

Wenn ausserdem jemand behauptet, durch eine Entscheidung oder Verfügung einer Verwaltungsbehörde in seinen Rechten verletzt zu sein, so steht ihm frei, seine Ansprüche vor dem Verwaltungsgerichtshofe im öffentlichen mündlichen Verfahren wide reinen Vertreter der Verwaltungsbehörde geltend zu machen.

Die Fälle, in welchen der Verwaltungsgerichtshof zu entscheiden hat, dessen Zusammensetzung, sowie das Verfahren vor demselben werden durch ein besonderes Gesetz bestimmt.

Staatsgrundgesetz über die Regierungs- und Vollzugsgewalt.

21. December 1867 (R. G. B. 145).

Mit Zustimmung der beiden Häuser des Reichsrathes finde Ich nachstehendes Staatsgrundgesetz über die Ausübung der Regierungs- und Vollzugsgewalt zu erlassen und anzuordnen wie folgt: —

Art. 1. Der Kaiser ist geheiligt, unverletzlich und unverantwortlich.

2. Der Kaiser übt die Regierungsgewalt durch verantwortliche Minister und die denselben untergeordneten Beamten und Bestellten aus.

3. Der Kaiser ernennt und entlässt die Minister und besetzt über Antrag der betreffenden Minister alle Aemter in allen Zweigen des Staatsdienstes, insoferne nicht das Gesetz ein Anderes verordnet.

4. Der Kaiser verleiht Titel, Orden und sonstige staatliche Auszeichnungen.

5. Der Kaiser führt den Oberbefehl über die bewaffnete Macht, erklärt Krieg und schliesst Frieden.

6. Der Kaiser schliesst die Staatsverträge ab.

Zur Giltigkeit der Handelsverträge und jener Staatsverträge, die das Reich oder Theile desselben belasten oder einzelne Bürger verpflichten, ist die Zustimmung des Reichsrathes erforderlich.

7. Das Münzrecht wird im Namen des Kaisers ausgeübt.

8. Der Kaiser leistet beim Antritte der Regierung in Gegenwart beider Häuser des Reichsrathes das eidliche Gelöbniss: —

" Die Grundgesetze der im Reichsrathe vertretenen Königreiche und Länder unverbrüchlich zu halten und in Uebereinstimmung mit denselben und den allgemeinen Gesetnen zu regieren."

9. Die Minister sind für die Verfassungs- und Gesetzmässigkeit der in die Sphäre ihrer Amtswirksamkeit fallenden Regierungsacte verantwortlich.

Diese Verantwortlichkeit, die Zusammensetzung des über die Ministeranklage erkennenden Gerichtshofes und das Verfahren vor demselben sind durch ein besonderes Gesetz geregelt.[1]

10. Die Kundmachung der Gesetze erfolgt im Namen des Kaisers mit Berufung auf die Zustimmung der verfassungsmässigen Vertretungskörper und unter Mitfertigung eines verantwortlichen Ministers.

11. Die Staatsbehörden sind innerhalb ihres amtlichen Wirkungskreises befugt, auf Grund der Gesetze Verordnungen zu erlassen und Befehle zu ertheilen, und sowohl die Beobachtung dieser letzteren als der gesetzlichen Anordnungen selbst gegenüber den hiezu Verpflichteten zu erzwingen.

Besondere Gesetze regeln das Executionsrecht der Verwaltungsbehörden, sowie die Befugnisse der bewaffneten Macht, die zur Erhaltung der öffentlichen Sicherheit, Ruhe und Ordnung dauernd organisirt ist oder in besonderen Fällen aufgeboten wird.

[1] The first clause of the law on the responsibility of the ministers (25. July 1867, R. G. B. 101) is as follows: " § 1. Jeder Regierungsact des Kaisers bedarf zu seiner Giltigkeit der Gegenzeichnung eines verantwortlichen Ministers."

12. Sämmtliche Staatsdiener sind innerhalb ihres amtlichen Wirkungskreises für die Beobachtung der Staatsgrundgesetze, sowie für die den Reichs- und Landesgesetzen entsprechende Geschäftsführung verantwortlich.

Diese Verantwortlichkeit geltend zu machen sind diejenigen Organe der Executivgewalt verpflichtet, deren Disciplinargewalt die betreffenden Staatsdiener unterstehen.

Die civilrechtliche Haftung derselben für die durch pflichtwidrige Verfügungen verursachten Rechtsverletzungen wird durch ein Gesetz normirt.

13. Alle Organe der Staatsverwaltung haben in ihrem Diensteide auch die unverbrüchliche Beobachtung der Staatsgrundgesetze zu beschwören.

SWITZERLAND.

AU NOM DE DIEU TOUT PUISSANT!

LA CONFÉDÉRATION SUISSE.

Voulant affermir l'alliance des Confédérés, maintenir et accroître l'unité, la force et l'honneur de la Nation suisse, a adopté la constitution fédérale suivante :

CONSTITUTION FÉDÉRALE

DE LA

CONFÉDÉRATION SUISSE.

CHAPITRE PREMIER.

DISPOSITIONS GÉNÉRALES.

Article 1. Les peuples des vingt-deux cantons souverains de la Suisse, unis par la présente alliance, savoir : *Zurich*, *Berne*, *Lucerne*, *Uri*, *Schwyz*, *Unterwalden* (le haut et la bas), *Glaris*, *Zoug*, *Fribourg*, *Soleure*, *Bâle* (ville et campagne), *Schaffhouse*, *Appenzell* (les deux Rhodes), *St-Gall*, *Grisons*, *Argovie*, *Tessin*, *Vaud*, *Valais*, *Neuchâtel* et *Genève*, forment dans leur ensemble la CONFÉDÉRATION SUISSE.

Article 2. La Confédération a pour but d'assurer l'indépendance de la patrie contre l'étranger, de maintenir la tranquillité et l'ordre à l'intérieur, de protéger la liberté et les droits des confédérés et d'accroître leur prospérité commune.

Article 3. Les cantons sont souverains en tant que leur souveraineté n'est pas limitée par la constitution fédérale, et, comme tels, ils exercent tous les droits qui ne sont pas délégués au pouvoir fédéral.

Article 4. Tous les Suisses sont égaux devant la loi. Il n'y a en

Suisse ni sujets, ni priviléges de lieu, de naissance, de personnes ou de familles.

Article 5. La Confédération garantit aux cantons leur territoire, leur souveraineté dans les limites fixées par l'article 3, leurs constitutions, la liberté et les droits du peuple, les droits constitutionnels des citoyens, ainsi que les droits et les attributions que le peuple a conférés aux autorités.

Article 6. Les cantons sont tenus de demander à la Confédération la garantie de leurs constitutions.

Cette garantie est accordée, pourvu :

a. que ces constitutions ne renferment rien de contraire aux dispositions de la constitution fédérale ;

b. qu'elles assurent l'exercice des droits politiques d'après des formes républicaines, — représentatives ou démocratiques ;

c. qu'elles aient été acceptées par le peuple et qu'elles puissent être révisées lorsque la majorité absolue des citoyens le demande.

Article 7. Toute alliance particulière et tout traité d'une nature politique entre cantons sont interdits.

En revanche, les cantons ont le droit de conclure entre eux des conventions sur des objets de législation, d'administration ou de justice ; toutefois ils doivent les porter à la connaissance de l'autorité fédérale, laquelle, si ces conventions renferment quelque chose de contraire à la Confédération ou aux droits des autres cantons, est autorisée à en empêcher l'exécution. Dans le cas contraire, les cantons contractants sont autorisés à réclamer pour l'exécution la coopération des autorités fédérales.

Article 8. La Confédération a seule le droit de déclarer la guerre et de conclure la paix, ainsi que de faire avec les états étrangers des alliances et des traités, notamment des traités de péage (douanes) et de commerce.

Article 9. Exceptionnellement, les cantons conservent le droit de conclure avec les états étrangers des traités sur des objets concernant l'économie publique, les rapports de voisinage et de police ; néanmoins ces traités ne doivent rien contenir de contraire à la Confédération ou aux droits d'autres cantons.

Article 10. Les rapports officiels entre les cantons et les gouvernements étrangers ou leurs représentants ont lieu par l'intermédiaire du conseil fédéral.

Toutefois, les cantons peuvent correspondre directement avec les autorités inférieures et les employés d'un état étranger, lorsqu'il s'agit des objets mentionnés à l'article précédent.

Article 11. Il ne peut être conclu de capitulations militaires.

Article 12. Les membres des autorités fédérales, les functionnaires civils et militaires de la Confédération, et les représentants ou les commissaires fédéraux ne peuvent recevoir d'un gouvernement étranger ni pensions ou traitements, ni titres, présents ou décorations.

S'ils sont déjà en possession de pensions, de titres ou de décorations, ils devront renoncer à jouir de leurs pensions et à porter leurs titres et leurs décorations pendant la durée de leurs fonctions.

Toutefois les employés inférieurs peuvent être autorisés par le conseil fédéral à recevoir leurs pensions.

On ne peut, dans l'armée fédérale, porter ni décoration ni titre accordés par un gouvernement étranger.

Il est interdit à tout officier, sous-officier ou soldat d'accepter des distinctions de ce genre.

Article 13. La Confédération n'a pas le droit d'entretenir des troupes permanentes.

Nul canton ou demi-canton ne peut avoir plus de 300 hommes de troupes permanentes, sans l'autorisation du pouvoir fédéral; la gendarmerie n'est pas comprise dans ce nombre.

Article 14. Des différends venant à s'élever entre cantons, les états s'abstiendront de toute voie de fait et de tout armement. Ils se soumettront à la décision qui sera prise sur ces différends conformément aux prescriptions fédérales.

Article 15. Dans le cas d'un danger subit provenant du dehors, le gouvernement du canton menacé doit requérir le secours des états confédérés et en aviser immédiatement l'autorité fédérale, le tout sans préjudice des dispositions qu'elle pourra prendre. Les cantons requis sont tenus de prêter secours. Les frais sont supportés par la Confédération.

Article 16. En cas de troubles à l'intérieur, ou lorsque le danger provient d'un autre canton, le gouvernement du canton menacé doit en aviser immédiatement le conseil fédéral, afin qu'il puisse prendre les mesures nécessaires dans les limites de sa compétence (article 102, chiffres 3, 10 et 11) ou convoquer l'assemblée fédérale. Lorsqu'il y a urgence, le gouvernement est autorisé, en avertissant

immédiatement le conseil fédéral, à requérir le secours d'autres états confédérés, qui sont tenus de le prêter.

Lorsque le gouvernement est hors d'état d'invoquer le secours, l'autorité fédérale compétente peut intervenir sans réquisition; elle est tenue de le faire lorsque les troubles compromettent la sûreté de la Suisse.

En cas d'intervention, les autorités fédérales veillent à l'observation des dispositions prescrites à l'article 5.

Les frais sont supportés par le canton qui a requis l'assistance ou occasionné l'intervention, a moins que l'assemblée fédérale n'en décide autrement, en considération de circonstances particulières.

Article 17. Dans les cas mentionnés aux deux articles précédents, chaque canton est tenu d'accorder libre passage aux troupes. Celles-ci sont immédiatement placées sous le commandement fédéral.

Article 18. Tout Suisse est tenu au service militaire.

Les militaires qui, par le fait du service fédéral, perdent la vie ou voient leur santé altérée d'une manière permanente, ont droit à des secours de la Confédération, pour eux ou pour leur famille, s'ils sont dans le besoin.

Chaque soldat reçoit gratuitement ses premiers effets d'armement, d'équipement et d'habillement. L'arme reste en mains du soldat aux conditions qui seront fixées par la législation fédérale.

La Confédération édictera des prescriptions uniformes sur la taxe d'exemption du service militaire.

Article 19. L'armée fédérale est composée :

a. des corps de troupes des cantons ;

b. de tous les Suisses qui, n'appartenant pas à ces corps, sont néanmoins astreints au service militaire.

Le droit de disposer de l'armée ainsi que du matériel de guerre prévu par la loi, appartient a la Confédération.

En cas de danger, la Confédération a aussi le droit de disposer exclusivement et directement des hommes non incorporés dans l'armée fédérale et de toutes les autres resources militaires des cantons.

Les cantons disposent des forces militaires de leur territoire, pour autant que ce droit n'est pas limité par la constitution ou les lois fédérales.

Article 20. Les lois sur l'organisation de l'armée émanent de la Confédération. L'exécution des lois militaires dans les cantons a

lieu par les autorités cantonales, dans les limites qui seront fixées par la législation fédérale et sous la surveillance de la Confédération.

L'instruction militaire dans son ensemble appartient à la Confédération ; il en est de même de l'armement.

La fourniture et l'entretien de l'habillement et de l'équipement restent dans la compétence cantonale ; toutefois, les dépenses qui en résultent sont bonifiées aux cantons par la Confédération, d'après une règle à établir par la législation fédérale.

Article 21. A moins que des considérations militaires ne s'y opposent, les corps doivent être formés de troupes d'un même canton.

La composition de ces corps de troupes, le soin du maintien de leur effectif, la nomination et la promotion des officiers de ces corps appartiennent aux cantons sous réserve des prescriptions générales qui leur seront transmises par la Confédération.

Article 22. Moyennant une indemnité équitable, la Confédération a le droit de se servir ou de devenir propriétaire des places d'armes et des bâtiments ayant une destination militaire qui existent dans les cantons, ainsi que de leurs accessoires.

Les conditions de l'indemnité seront réglées par la législation fédérale.

Article 23. La Confédération peut ordonner à ses frais ou encourager par des subsides les travaux publics qui intéressent la Suisse ou une partie considérable du pays.

Dans ce but, elle peut ordonner l'expropriation moyennant une juste indemnité. La législation fédérale statuera les dispositions ultérieures sur cette matière.

L'asemblée fédérale peut interdire les constructions publiques qui porteraient atteinte aux intérêts militaires de la Confédération.

Article 24. La Confédération a le droit de haute surveillance sur la police des endiguements et des forêts dans les régions élevées.

Elle concourra à la correction et à l'endiguement des torrents, ainsi qu'au reboisement des régions où ils prennent leur source. Elle décrétera les mesures nécessaires pour assurer l'entretien de ces ouvrages et la conservation des forêts existantes.

Article 25. La Confédération a le droit de statuer des dispositions législatives pour régler l'exercice de la pêche et de la chasse, principalement en vue de la conservation du gros gibier dans les montagnes, ainsi que pour protéger les oiseaux utiles a l'agriculture et a la sylviculture.

Article 25 bis [1] Il est expressément interdit de seigner les animaux de boucherie sans les avoir étourdis prealablement; cette disposition s'applique à tout mode d'abatage et à toute espèce de bétail.

Article 26. La législation sur la construction et l'exploitation des chemins de fer est du domaine de la Confédération.

Article 27. La Confédération a le droit de créer outre l'école polytechnique fédérale existante, une université fédérale et d'autres établissements d'instruction supérieure ou de subventionner des établissements de ce genre.

Les cantons pourvoient à l'instruction primaire, qui doit être suffisante et placée exclusivement sous la direction de l'autorité civile. Elle est obligatoire et, dans les écoles publiques, gratuite.

Les écoles publiques doivent pouvoir être fréquentées par les adhérents de toutes les confessions, sans qu'ils aient à souffrir d'aucune façon dans leur liberté de conscience ou de croyance.

La Confédération prendra les mesures nécessaires contre les cantons qui ne satisferaient pas à ces obligations.

Article 28. Ce qui concerne les péages relève de la Confédération. Celle-ci peut percevoir des droits d'entrée et des droits de sortie.

Article 29. La perception des péages fédéraux sera réglée conformément aux principes suivants:

1. Droits sur l'importation:

a. Les matières nécessaires à l'industrie et à l'agriculture du pays seront taxées aussi bas que possible.

b. Il en sera de même des objets nécessaires à la vie.

c. Les objets de luxe seront soumis aux taxes les plus élevées.

A moins d'obstacles majeurs, ces principes devront aussi être observés lors de la conclusion de traités de commerce avec l'étranger.

2. Les droits sur l'exportation seront aussi modérés que possible.

3. La législation des péages contiendra des dispositions propres à assurer le commerce frontière et sur les marchés.

Les dispositions ci-dessus n'empêchent point la Confédération de prendre temporairement des mesures exceptionnelles dans les circonstances extraordinaires.

Article 30. Le produit des péages appartient à la Confédération.

[1] Adopted Aug. 20, 1898.

Les indemnités payées jusqu'à présent aux cantons pour le rachat des péages, des droits de chaussée et de pontonnage, des droits de douane et d'autres émoluments semblables, sont supprimées.

Les cantons d'Uri, des Grisons, du Tessin et du Valais reçoivent, par exception et à raison de leurs routes alpestres internationales, une indemnité annuelle dont, en tenant compte de toutes les circonstances, le chiffre est fixé comme suit:

Uri,	fr. 80,000
Grisons,	fr. 200,000
Tessin,	fr. 200,000
Valais,	fr. 50,000

Les cantons d'Uri et du Tessin recevront en outre, pour le déblaiement des neiges sur la route du St-Gothard, une indemnité annuelle totale de fr. 40,000 francs, aussi longtemps que cette route ne sera pas remplacée par un chemin de fer.

Article 31. La liberté de commerce et de l'industrie est garantie dans toute l'étendue de la Confédération.

Sont réservés:

a. La régale du sel et de la poudre de guerre, les péages fédéraux, les droits d'entrée sur les vins et les autres boissons spiritueuses, ainsi que les autres droits de consommation formellement reconnus par la Confédération, à teneur de l'article 32.

b.[1] La fabrication et la vente des boissons distillées, en conformité de l'article 32[bis].

c.[1] Tout ce qui concerne les auberges et la commerce au détail des boissons spiritueuses, en ce sens que les cantons ont le droit de soumettre par voie législative, aux restrictions exigées par le bien-être public, l'exercice du métier d'aubergiste et le commerce au détail des boissons spiritueuses.

d. Les mesures de police sanitaire contre les épidémies et les épizooties.

e. Les dispositions touchant l'exercice des professions commerciales et industrielles, les impôts qui s'y rattachent et la police des routes. Ces dispositions ne peuvent rien renfermer de contraire au principe de la liberté de commerce et d'industrie.

Article 32. Les cantons sont autorisés à percevoir les droits d'entrée sur les vins et les autres boissons spiritueuses prévus à l'article 31, lettre *a*, toutefois sous les restrictions suivantes:

[1] Adopted Oct. 25, 1885.

a. La perception de ces droits d'entrée ne doit nullement grever le transit ; elle doit gêner le moins possible le commerce, qui ne peut être frappé d'aucune autre taxe.

b. Si les objets importés pour la consommation sont réexportés du canton, les droits payés pour l'entrée sont restitués sans qu'il en résulte d'autres charges.

c. Les produits d'origine suisse seront moins imposés que ceux de l'étranger.

d. Les droits actuels d'entrée sur les vins et les autres boissons spiritueuses d'origine suisse ne pourront être haussés par les cantons où il en existe. Il n'en pourra être établi sur ces produits par les cantons qui n'en perçoivent pas actuellement.

e. Les lois et les arrêtés des cantons sur la perception des droits d'entrée sont, avant leur mise à exécution, soumis à l'approbation de l'autorité fédérale, afin qu'elle puisse, au besoin, faire observer les dispositions qui précèdent.

Tout les droits d'entrée perçus actuellement par les cantons, ainsi que les droits analogues perçus par les communes, doivent disparaitre sans indemnité à l'expiration de l'année 1890.

Article 32 bis.[1] La Confédération a le droit de décréter, par voie législative, des prescriptions sur la fabrication et la vente des boissons distillées. Toutefois, ces prescriptions ne doivent pas imposer les produits qui sont exportés ou qui ont subi une préparation les rendant impropres à servir de boissons. La distillation du vin, des fruits à noyaux ou à pepins et de leurs déchets, des racines de gentiane, des baies de genièvre et d'autres matières analogues est exceptée des prescriptions fédérales concernant la fabrication et l'impôt.

Après l'abolition des droits d'entrée sur les boissons spiritueuses mentionnées à l'article 32 de la constitution fédérale, le commerce des boissons alcooliques non distillées ne pourra plus être soumis par les cantons à aucun impôt spécial, ni à d'autres restrictions que celles qui sont nécessaires pour protéger le consommateur contre les boissons falsifiées ou nuisibles à la santé. Restent toutefois réservées, en ce qui concerne l'exploitation des auberges et la vente au détail de quantités inférieures à deux litres, les compétences attribuées aux cantons par l'article 31.

Les recettes nettes provenant des droits sur la vente des boissons distillées restent acquises aux cantons dans lesquels ces droits sont

[1] Adopted Oct. 25, 1885.

Les recettes nettes de la Confédération résultant de la distillation indigène et de l'élévation correspondante des droits d'entrée sur les boissons distillés étrangères seront réparties entre tous les cantons proportionnellement à leur population de fait établie par le recensement fédéral le plus récent. Les cantons sont tenus d'employer au moins 10% des recettes pour combattre l'alcoolisme dans ses causes et dans ses effets.

Article 33. Les cantons peuvent exiger des preuves de capacité de ceux qui veulent exercer des professions libérales.

La législation fédérale pourvoit à ce que ces derniers puissent obtenir à cet effet des actes de capacité valables dans toute la Confédération.

Article 34. La Confédération a le droit de statuer des prescriptions uniformes sur le travail des enfants dans les fabriques, sur la durée du travail qui pourra y être imposé aux adultes, ainsi que sur la protection à accorder aux ouvriers contre l'exercice des industries insalubres et dangereuses.

Les opérations des agences d'émigration et des entreprises d'assurance non instituées par l'état sont soumises à la surveillance et à la législation fédérales.

Article 34.[1] La Confédération introduira, par voie législative, l'assurance en cas d'accident et de maladie, en tenant compte des caisses de secours existantes.

Elle peut déclarer la participation à ces assurances obligatoire en général ou pour certaines catégories déterminées de citoyens.

Article 35. Il est interdit d'ouvrir des maisons de jeu. Celles qui existent actuellement seront fermées le 31 décembre 1877.

Les concessions qui auraient été accordées ou renouvelées depuis le commencement de l'année 1871 sont déclarées nulles.

La Confédération peut aussi prendre les mesures nécessaires concernant les loteries.

Article 36. Dans toute la Suisse, les postes et les télégraphes sont du domaine fédéral.

Le produit des postes et des télégraphes appartient à la caisse fédérale.

Les tarifs seront fixés d'après les mêmes principes et aussi équitablement que possible dans toutes les parties de la Suisse.

L'inviolabilité du secret des lettres et des télégrammes est garantie.

[1] Adopted Oct. 26, 1890.

Article 37. La Confédération exerce la haute surveillance sur les routes et les ponts dont le maintien l'intéresse.

Les sommes dues aux cantons désignés à l'article 30, à raison de leurs routes alpestres internationales, seront retenues par l'autorité fédérale si ces routes ne sont pas convenablement entretenues par eux.

Article 38. La Confédération exerce tous les droits compris dans la régale des monnaies.

Elle a seule le droit de battre monnaie.

Elle fixe le système monétaire et peut édicter, s'il y a lieu, des prescriptions sur la tarification de monnaies étrangères.

Article 39.[1] Le droit d'émettre des billets de banque et toute autre monnaie fiduciaire appartient exclusivement à la Confédération.

La Confédération peut exercer le monopole des billets de banque au moyen d'une banque d'état placée sous une administration spéciale, ou en concéder l'exercice, sous réserve du droit de rachat, à une banque centrale par actions à créer qui serait administrée avec le concours et sous le contrôle de la Confédération.

La banque investie du monopole aura pour tâche principale de servir en Suisse de régulateur du marché de l'argent et de faciliter les opérations de paiement.

Le bénéfice net de la banque, déduction faite d'un intérêt ou d'un dividende équitable à servir au capital de dotation ou au capital-actions et après prélèvement des versements à opérer au fonds de réserve, revient au moins pour les deux tiers aux cantons.

La banque et ses succursales seront exemptes de tout impôt dans les cantons.

L'acceptation obligatoire des billets de banque et de toute autre monnaie fiduciaire ne pourra être décrétée par la Confedération qu'en cas de necessité en temps de guerre.

La législation fédérale édictera les disposition relatives au siège de la banque, à ses bases, à son organisation et à l'exécution de cet article en général.

[1] On October 18, 1891, this article was substituted for the original one, which read as follows: —

Article 39. La Confédération a le droit de décréter par voie législative des descriptions générales sur l'émission et le remboursement des billets de banque.

Elle ne peut cependant créer aucun monopole pour l'émission des billets de banque, ni décréter l'acceptation obligatoire de ces billets.

Article 40. La Confédération détermine le système des poids et mesures.

Les cantons exécutent, sous la surveillance de la Confédération, les lois concernant cette matière.

Article 41. La fabrication et la vente de la poudre de guerre dans toute la Suisse appartiennent exclusivement à la Confédération.

Les compositions minières impropres au tir ne sont point comprises dans la régale des poudres.

Article 42. Les dépenses de la Confédération sont couvertes :

a. par le produit de la fortune fédérale ;

b. par le produit des péages fédéraux perçus à la frontière suisse ;

c. par le produit des postes et des télégraphes ;

d. par le produit de la régale des poudres ;

e. par la moitié du produit brut de la taxe sur les exemptions militaires perçue par les cantons ;

f. par les contributions des cantons, que réglera la législation fédérale, en tenant compte surtout de leur richesse et de leurs ressources imposables.

Article 43. Tout citoyen d'un canton est citoyen suisse.

Il peut, à ce titre, prendre part, au lieu de son domicile, à toutes les élections et votations en matière fédérale, après avoir dûment justifié de sa qualite d'électeur.

Nul ne peut exercer des droits politiques dans plus d'un canton.

Le Suisse etabli jouit, au lieu de son domicile, de tous les droits des citoyens du canton et, avec ceux-ci, de tous les droits des bourgeois de la commune. La participation aux biens des bourgeoisies et des corporations et le droit de vote dans les affaires purement bourgeoisiales sont exceptés de ces droits, à moins que la législation cantonale n'en décide autrement.

En matière cantonale et communale il devient électeur après un établissement de trois mois.

Les lois cantonales sur l'établissement et sur les droits électoraux que possèdent en matière communale les citoyens établis sont soumises à la sanction du conseil fédéral.

Article 44. Aucun canton ne peut renvoyer de son territoire un de ses ressortissants, ni le priver du droit d'origine ou de cité.

La législation fédérale déterminera les conditions auxquelles les étrangers peuvent être naturalisés, ainsi que celles auxquelles un

Suisse peut renoncer à sa nationalité pour obtenir la naturalisation dans un pays étranger.

Article 45. Tout citoyen suisse a le droit de s'établir sur un point quelconque du territoire suisse, moyennant la production d'un acte d'origine ou d'une autre pièce analogue.

Exceptionnellement, l'établissement peut être *refusé* ou *retiré* à ceux qui, par suite d'un jugement pénal, ne jouissent pas de leurs droits civiques.

L'établissement peut être de plus *retiré* à ceux qui ont été à réitérées fois punis pour des délits graves, comme aussi à ceux qui tombent d'une manière permanente à la charge de la bienfaisance publique et auxquels leur commune, soit leur canton d'origine, refuse une assistance suffisante après avoir été invitée officiellement à l'accorder.

Dans les cantons où existe l'assistance au domicile, l'autorisation de s'établir peut être subordonnée, s'il s'agit de ressortissants du canton, à la condition qu'ils soient en état de travailler et qu'ils ne soient pas tombés, à leur ancien domicile dans le canton d'origine, d'une manière permanente à la charge de la bienfaisance publique.

Tout renvoi pour cause d'indigence droit être ratifié par le gouvernement du canton du domicile et communiqué préalablement au gouvernement du canton d'origine.

Le canton dans lequel un Suisse établit son domicile ne peut exiger de lui un cautionnement, ni lui imposer aucune charge particulière pour cet établissement. De même, les communes ne peuvent imposer aux Suisses domiciliés sur leur territoire d'autres contributions que celles qu'elles imposent à leurs propres ressortissants.

Une loi fédérale fixera le maximum de l'émolument de chancellerie à payer pour obtenir un permis d'établissement.

Article 46. Les personnes établies en Suisse sont soumises, dans la règle, à la jurisdiction et à la législation du lieu de leur domicile en ce qui concerne les rapports de droit civil.

La législation fédérale statuera les dispositions nécessaires en vue de l'application de ce principe, et pour empêcher qu'un citoyen ne soit imposé à double.

Article 47. Une loi fédérale déterminera la différence entre l'établissement et le séjour et fixera en même temps les règles auxquelles seront soumis les Suisses en séjour quant à leurs droits politiques et à leurs droits civils.

Article 48. Une loi fédérale statuera les dispositions nécessaires pour régler ce qui concerne les frais de maladie et de sépulture des ressortissants pauvres d'un canton tombés malades ou décédés dans un autre canton.

Article 49. La liberté de conscience et de croyance est inviolable.

Nul ne peut être contraint de faire partie d'une association religieuse, de suivre un enseignement religieux, d'accomplir un acte religieux, ni encourir des peines, de quelque nature qu'elles soient, pour cause d'opinion religieuse.

La personne qui exerce l'autorité paternelle ou tutélaire a le droit de disposer, conformement aux principes ci-dessus, de l'éducation religieuse des enfants jusqu'à l'âge de 16 ans révolus.

L'exercice des droits civils ou politiques ne peut être restreint par des prescriptions ou des conditions de nature ecclésiastique ou religieuse, quelles qu'elles soient.

Nul ne peut, pour cause d'opinion religieuse, s'affranchir de l'accomplissement d'un devoir civique.

Nul n'est tenu de payer des impôts dont le produit est spécialement affecté aux frais proprement dits du culte d'une communauté religieuse à laquelle il n'appartient pas. L'exécution ultérieure de ce principe reste réservée à la législation fédérale.

Article 50. Le libre exercice des cultes est garanti dans les limites compatibles avec l'ordre public et les bonnes mœurs.

Les cantons et la Confédération peuvent prendre les mesures nécessaires pour le maintien de l'ordre public et de la paix entre les membres des diverses communautés religieuses, ainsi que contre les empiétements des autorités ecclésiastiques sur les droits des citoyens et de l'état.

Les contestations de droit public ou de droit privé auxquelles donne lieu la création de communautés, religieuses ou une scission de communautés religieuses existantes, peuvent être portées par voie de recours devant les autorités fédérales compétentes.

Il ne peut être érigé d'évêchés sur le territoire suisse sans l'approbation de la Confédération.

Article 51. L'ordre des Jésuites et les sociétés qui lui sont affiliées ne peuvent être reçus dans aucune partie de la Suisse, et toute action dans l'église et dans l'école est interdite à leurs membres.

Cette interdiction peut s'étendre aussi, par voie d'arrêté fédéral, à

d'autres ordres religieux dont l'action est dangereuse pour l'état ou trouble la paix entre les confessions.

Article 52. Il est interdit de fonder de nouveaux couvents ou ordres religieux et de rétablir ceux qui ont été supprimés.

Article 53. L'état civil et la tenue des registres qui s'y rapportent est du ressort des autorités civiles. La législation fédérale statuera à ce sujet les dispositions ultérieures.

Le droit de disposer des lieux de sépulture appartient à l'autorité civile. Elle doit pourvoir à ce que toute personne décédée puisse être enterrée décemment.

Article 54. Le droit au mariage est placé sous la protection de la Confédération.

Aucun empêchement au mariage ne peut être fondé sur des motifs confessionnels, sur l'indigence de l'un ou de l'autre des époux, sur leur conduite ou sur quelque autre motif de police que ce soit.

Sera reconnu comme valable dans toute la Confédération le mariage conclu dans un canton ou à l'étranger, conformément à la législation qui y est en vigueur.

La femme acquiert par le mariage le droit de cité et de bourgeoisie de son mari.

Les enfants nés avant le mariage sont légitimés par le mariage subséquent de leurs parents.

Il ne peut être perçu aucune finance d'admission ni aucune taxe semblable de l'un ou de l'autre époux.

Article 55. La liberté de la presse est garantie.

Toutefois, les lois cantonales statuent les mesures nécessaires à la répression des abus ; ces lois sont soumises à l'approbation du conseil fédéral.

La Confédération peut aussi statuer des peines pour réprimer les abus dirigés contre elle ou ses autorités.

Article 56. Les citoyens ont le droit de former des associations, pourvu qu'il n'y ait dans le but de ces associations ou dans les moyens qu'elles emploient rien d'illicite ou de dangereux pour l'état. Les lois cantonales statuent les mesures nécessaires à la répression des abus.

Article 57. Le droit de pétition est garanti.

Article 58. Nul ne peut être distraint de son juge naturel. En conséquence, il ne pourra être établi de tribunaux extraordinaires.

La juridiction ecclésiastique est abolie.

Article 59. Pour réclamations personnelles, le débiteur solvable ayant domicile en Suisse doit être recherché devant le juge de son domicile; ses biens ne peuvent en conséquence être saisis ou séquestrés hors du canton où il est domicilié, en vertu de réclamations personnelles.

Demeurent réservées, en ce qui concerne les étrangers, les dispositions des traités internationaux.

La contrainte par corps est abolie.

Article 60. Tous les cantons sont obligés de traiter les citoyens des autres états confédérés comme ceux de leur état en matière de législation et pour tout ce qui concerne les voies juridiques.

Article 61. Les jugements civils définitifs rendus dans un canton sont exécutoires dans toute la Suisse.

Article 62. La traite foraine est abolie dans l'intérieur de la Suisse, ainsi que le droit de retrait des citoyens d'un canton contre ceux d'autres états confédérés.

Article 63. La traite foraine à l'égard des pays étrangers est abolie sous réserve de réciprocité.

Article 64. La législation

sur la capacité civile,

sur toutes les matières du droit se rapportant au commerce et aux transactions mobilières (droit des obligations, y compris le droit commercial et le droit de change),

sur la propriété littéraire et artistique,

(sur la protection des dessins et modèles nouveaux, ainsi que des inventions représentées par des modèles et applicables à l'industrie,)[1]

sur la poursuite pour dettes et la faillite,

est du ressort de la Confédération.

L'administration de la justice reste aux cantons sous réserve des attributions du tribunal fédéral.

Article 65. Il ne pourra être prononcé de condamnation à mort pour cause de délit politique.

Les peines corporelles sont interdites.[2]

Article 66. La législation fédérale fixe les limites dans lesquelles un citoyen suisse peut être privé de ses droits politiques.

[1] Adopted July 10, 1887.

[2] On May 18, 1879, this clause was substituted for the original one which forbade capital as well as corporal punishment.

Article 67. La législation fédérale statue sur l'extradition des accusés d'un canton à l'autre; toutefois, l'extradition ne peut être rendue obligatoire pour les délits politiques et ceux de la presse.

Article 68. Les mesures à prendre pour incorporer les gens sans patrie (*Heimatlosen*) et pour empêcher de nouveaux cas de ce genre sont réglées par la loi fédérale.

Article 69. La législation concernant les mesure de police sanitaire contre les épidémies et les épizooties qui offrent un danger général est du domaine de la Confédération.

Article 70. La Confédération a le droit de renvoyer de son territoire les étrangers qui compromettent la sûreté intérieure ou extérieure de la Suisse.

CHAPITRE II.

AUTORITÉ FÉDÉRALES.

I. ASSEMBLÉ FÉDÉRALE.

Article 71. Sous réserve des droits du peuple et des cantons (articles 89 et 121), l'autorité suprême de la Confédération est exercée par l'assemblée fédérale, qui se compose de deux sections ou conseils, savoir:

A. le conseil national;
B. le conseil des états.

A. *Conseil national.*

Article 72. Le conseil national se compose des députés du peuple suisse, élus à raison d'un membre par 20,000 âmes de la population totale. Des fractions en sus de 10,000 âmes sont comptées pour 20,000.

Chaque canton et, dans les cantons partagés, chaque demi-canton élit un député au moins.

Article 73. Les élections pour le conseil national sont directes. Elles ont lieu dans des colléges électoraux fédéraux, qui ne peuvent toutefois être formés de parties de différents cantons.

Article 74. A droit de prendre part aux élections et aux votations tout Suisse âgé de vingt ans révolus et qui n'est du reste point exclu du droit de citoyen actif par la législation du canton dans lequel il a son domicile.

Toutefois, la législation fédérale pourra régler d'une manière uniforme l'exercice de ce droit.

Article 75. Est éligible comme membre du conseil national tout citoyen suisse laïque et ayant droit de voter.

Article 76. Le conseil national est élu pour trois ans et renouvelé intégralement chaque fois.

Article 77. Les députés au conseil des états, les membres du conseil fédéral et les functionnaires nommés par ce conseil ne peuvent être simultanément membres du conseil national.

Article 78. Le conseil national choisit dans son sein, pour chaque session ordinaire ou extraordinaire, un président et un vice-président.

Le membre qui a été président pendant une session ordinaire ne peut, à la session ordinaire suivante, revêtir cette charge ni celle de vice-président.

Le même membre ne peut être vice-président pendant deux sessions ordinaires consécutives.

Lorsque les avis sont également partagés, le président décide; dans les élections, il vote comme les autres membres.

Article 79. Les membres du conseil national sont indemnisés par la caisse fédérale.

B. *Conseil des états.*

Article 80. Le conseil des états se compose de quarante-quatre députés des cantons. Chaque canton nomme deux députés; dans les cantons partagés, chaque demi-état en élit un.

Article 81. Les membres du conseil national et ceux du conseil fédéral ne peuvent être députés au conseil des états.

Article 82. Le conseil des états choisit dans son sein, pour chaque session ordinaire ou extraordinaire, un président et un vice-président.

Le président ni le vice-président ne peuvent être élus parmi les députés du canton dans lequel a été choisi le président pour la session ordinaire qui a immédiatement précedé.

Les députés du même canton ne peuvent revêtir la charge de vice-président pendant deux sessions ordinaires consécutives.

Lorsque les avis sont également partagés, le président décide; dans les elections, il vote comme les autres membres.

Article 83. Les députés au conseil des états sont indemnisés par les cantons.

C. *Attributions de l'assemblée fédérale.*

Article 84. Le conseil national et le conseil des états delibèrent sur tous les objets que la présente constitution place dans le ressort de la Confédération et qui ne sont pas attribués à une autre autorité fédérale.

Article 85. Les affaires de la compétence des deux conseils sont notamment les suivantes:

1. Les lois sur l'organisation et le mode d'élection des autorités fédérales.

2. Les lois et arrêtés sur les matières que la Constitution place dans la competence fédérale.

3. Le traitement et les indemnités des membres des autorités de la Confédération et de la chancellerie fédérale; la création de fonctions fédérales permanentes et la fixation des traitements.

4. L'élection du conseil fédéral, du tribunal fédéral et du chancelier, ainsi que du général en chef de l'armée fédérale.

La législation fédérale pourra attribuer à l'assemblée fédérale d'autres droits d'élection ou de confirmation.

5. Les alliances et les traités avec les états étrangers, ainsi que l'approbation des traités des cantons entre eux ou avec les états étrangers; toutefois les traités des cantons ne sont portés à l'assemblée fédérale que lorsque le conseil fédéral ou un autre canton élève des réclamations.

6. Les mesures pour la sûreté extérieure ainsi que pour le maintien de l'indépendance et de la neutralité de la Suisse; les déclarations de guerre et la conclusion de la paix.

7. La garantie des constitutions et du territoire des cantons; l'intervention par suite de cette garantie; les mesures pour la sûreté intérieure de la Suisse, pour le maintien de la tranquillité et de l'ordre; l'amnistie et le droit de grâce.

8. Les mesures pour faire respecter la constitution fédérale et assurer la garantie des constitutions cantonales, ainsi que celles qui ont pour but d'obtenir l'accomplissement des devoirs fédéraux.

9. Le droit de disposer de l'armée fédérale.

10. L'établissement du budget annuel, l'approbation des comptes de l'état et les arrêtés autorisant des emprunts.

11. La haute surveillance de l'administration et de la justice fédérales.

12. Les réclamations contre les décisions du conseil fédéral relatives à des contestations administratives (art. 113).

13. Les conflits de compétence entre autorités fédérales.

14. La révision de la constitution fédérale.

Article 86. Les deux conseils s'assemblent, chaque année une fois, en session ordinaire, le jour fixé par le règlement.

Ils sont extraordinairement convoqués par le conseil fédéral, ou sur la demande du quart des membres du conseil national ou sur celle de cinq cantons.

Art. 87. Un conseil ne peut délibérer qu'autant que les députés présents forment la majorité absolue du nombre total de ses membres.

Article 88. Dans le conseil national et dans le conseil des états, les décisions sont prises à la majorité absolue des votants.

Article 89. Les lois fédérales, les décrets et les arrêtés fédéraux ne peuvent être rendus qu'avec l'accord des deux conseils.

Les lois fédérales sont soumises à l'adoption ou au rejet du peuple, si la demande en est faite par 30,000 citoyens actifs ou par huit cantons. Il en est de même des arrêtés fédéraux qui sont d'une portée générale et qui n'ont pas un caractère d'urgence.

Article 90. La législation fédérale déterminera les formes et les délais à observer pour les votations populaires.

Article 91. Les membres des deux conseils votent sans instructions.

Article 92. Chaque conseil délibère séparément. Toutefois, lorsqu'il s'agit des élections mentionnées à l'article 85, chiffre 4, d'exercer le droit de grâce ou de prononcer sur un conflit de compétence (article 85, chiffre 13), les deux conseils se réunissent pour délibérer en commun sous la direction du président du conseil national, et c'est la majorité des membres votants des deux conseils qui décide.

Article 93. L'initiative appartient à chacun des deux conseils et à chacun de leurs membres.

Les cantons peuvent exercer le même droit par correspondance.

Article 94. Dans la règle, les séances des conseils sont publiques.

II. CONSEIL FÉDÉRAL.

Article 95. L'autorité directoriale et exécutive supérieure de la Confédération est exercée par un conseil fédéral composé de sept membres.

Article 96. Les membres du conseil fédéral sont nommés pour trois ans, par les conseils réunis, et choisis parmi tous les citoyens

suisses éligibles au conseil national. On ne pourra toutefois choisir plus d'un membre du conseil federal dans le même canton.

Le conseil fédéral est renouvelé intégralement après chaque renouvellement du conseil national.

Les membres qui font vacance dans l'intervalle des trois ans sont remplacés, à la première session de l'assemblée fédérale, pour le reste de la durée de leurs fonctions.

Article 97. Les membres du conseil fédéral ne peuvent, pendant la durée de leurs fonctions, revêtir aucun autre emploi, soit au service de la Confédération, soit dans un canton, ni suivre d'autre carrière ou exercer de profession.

Article 98. Le conseil fédéral est présidé par le president de la Confédération. Il a un vice-président.

Le président de la Confédération et le vice-président du conseil fédéral sont nommés pour une année, par l'assemblée fédérale, entre les membres du conseil.

Le président sortant de charge ne peut être élu président ou vice-président pour l'année qui suit. Le même membre ne peut revêtir la charge de vice-président pendant deux années de suite.

Article 99. Le président de la Confédération et les autres membres du conseil fédéral reçoivent un traitement annuel de la caisse fédérale.

Article 100. Le conseil fédéral ne peut délibérer que lorsqu'il y a au moins quatre membres présents.

Article 101. Les membres du conseil fédéral ont voix consultative dans les deux sections de l'assemblée fédérale, ainsi que le droit d'y faire des propositions sur les objets en délibération.

Article 102. Les attributions et les obligations du conseil fédéral, dans les limites de la presente constitution, sont notamment les suivantes :

1. Il dirige les affaires fédérales, conformément aux lois et arrêtés de la Confédération.

2. Il veille à l'observation de la constitution, des lois et des arrêtés de la Confédération, ainsi que des prescriptions des concordats fédéraux ; il prend, de son chef ou sur plainte, les mesures nécessaires pour les faire observer, lorsque le recours n'est pas du nombre de ceux qui doivent être portés devant le tribunal fédéral à teneur de l'article 113.

3. Il veille à la garantie des constitutions cantonales.

4. Il présente des projets de lois ou d'arrêtés à l'assemblée

fédérale et donne son préavis sur les propositions qui lui sont adressées par les conseils ou par les cantons.

5. Il pourvoit à l'exécution des lois et des arrêtés de la Confédération et à celle des jugements du tribunal fédéral, ainsi que des transactions ou des sentences arbitrales sur des différends entre cantons.

6. Il fait les nominations qui ne sont pas attribués à l'assemblée fédérale ou au tribunal fédéral ou à une autre autorité.

7. Il examine les traités des cantons entre eux ou avec l'étranger, et il les approuve, s'il y a lieu (art. 85, chiffre 5).

8. Il veille aux intérêts de la Confédération au dehors, notamment à l'observation de ses rapports internationaux, et il est, en général, chargé des relations extérieures.

9. Il veille à la sûreté extérieure de la Suisse, au maintien de son indépendance et de sa neutralité.

10. Il veille à la sûrete intérieure de la Confédération, au maintien de la tranquillité et de l'ordre.

11. En cas d'urgence et lorsque l'assemblée fédérale n'est pas réunie, le conseil fédéral est autorisé à lever les troupes nécessaires et à en disposer, sous réserve de convoquer immédiatement les conseils, si le nombre des troupes levées dépasse deux mille hommes ou si elles restent sur pied au delà de trois semaines.

12. Il est chargé de ce qui a rapport au militaire fédéral, ainsi que de toutes les autres branches de l'administration qui appartiennent à la Confédération.

13. Il examine les lois et les ordonnances des cantons qui doivent être soumises à son approbation ; il exerce la surveillance sur les branches de l'administration cantonale qui sont placées sous son contrôle.

14. Il administre les finances de la Confédération, propose le budget et rend les comptes des recettes et des dépenses.

15. Il surveille la gestion de tous les fonctionnaires et employés de l'administration fédérale.

16. Il rend compte de sa gestion à l'assemblée fédérale, à chaque session ordinaire, lui présente un rapport sur la situation de la Confédération tant à l'intérieur qu'au dehors, et recommande à son attention les mesures qu'il croit utiles à l'accroissement de la prospérité commune.

Il fait aussi des rapports spéciaux lorsque l'assemblée fédérale ou une de ses sections le demande.

Article 103. Les affaires du conseil fédéral sont réparties par départements entre ses membres. Cette répartition a uniquement pour but de faciliter l'examen et l'expédition des affaires; les décisions émanent du conseil fédéral comme autorité.

Article 104. Le conseil fédéral et ses départements sont autorisés à appeler des experts pour des objets spéciaux.

III. CHANCELLERIE FÉDÉRALE.

Article 105. Une chancellerie fédérale, à la tête de laquelle se trouve le chancelier de la Confédération, est chargée du secrétariat de l'assemblée fédérale et de celui du conseil fédéral.

Le chancelier est élu par l'assemblée fédérale pour le terme de trois ans, en même temps que le conseil fédéral.

La chancellerie est sous la surveillance spéciale du conseil fédéral.

Une loi fédérale détermine ce qui a rapport à l'organisation de la chancellerie.

IV. TRIBUNAL FÉDÉRAL.

Article 106. Il y a un tribunal fédéral pour l'administration de la justice en matière fédérale.

Il y a de plus un jury pour les affaires pénales (article 112).

Article 107. Les membres et les suppléants du tribunal fédéral sont nommés par l'assemblée fédérale, qui aura égard à ce que les trois langues nationales y soient représentées.

La loi détermine l'organisation du tribunal fédéral et de ses sections, le nombre de ses membres et des suppléants, la durée de leurs fonctions et leur traitement.

Article 108. Péut être nommé au tribunal fédéral tout citoyen suisse éligible au conseil national.

Les membres de l'assemblée fédérale et du conseil fédéral et les fonctionnaires nommés par ses autorités, ne peuvent en même temps faire partie du tribunal fédéral.

Les membres du tribunal fédéral ne peuvent, pendant la durée de leurs fonctions, revêtir aucun autre emploi, soit au service de la Confédération, soit dans un canton, ni suivre d'autre carrière ou exercer de profession.

Article 109. La tribunal fédéral organise sa chancellerie et en nomme le personnel.

Article 110. Le tribunal fédéral connaît des différends de droit civil :

1. entre la Confédération et les cantons ;

2. entre la Confédération d'une part et des corporations ou des particuliers d'autre part, quand ces corporations ou ces particuliers sont demandeurs et quand le litige atteint le degré d'importance que déterminera la législation fédérale ;

3. entre cantons ;

4. entre des cantons d'une part et des corporations ou des particuliers d'autre part, quand une des parties le requiert et que le litige atteint le degré d'importance que déterminera la législation fédérale.

Il connaît de plus des différends concernant le *heimatlosat*, ainsi que des contestations qui surgissent entre communes de différents cantons touchant le droit de cité.

Article 111. Le tribunal fédéral est tenu de juger d'autres causes, lorsque les parties s'accordent à le nantir et que l'objet en litige atteint le degré d'importance que déterminera la législation fédérale.

Article 112. Le tribunal fédéral assisté du jury, lequel statue sur les faits, connaît en matière pénale :

1. des cas de haute trahison envers la Confédération, de révolte ou de violence contre les autorités fédérales ;

2. des crimes et des délits contre le droit des gens ;

3. des crimes et des délits politiques qui sont la cause ou la suite de troubles par lesquels une intervention fédérale armée est occasionnée ;

4. des faits relevés à la charge de fonctionnaires nommés par une autorité fédérale, quand cette autorité en saisit le tribunal fédéral.

Article 113. Le tribunal fédéral connaît, en outre :

1. des conflits de compétence entre les autorités fédérales, d'une part, et les autorités cantonales, d'autre part ;

2. des différends entre cantons, lorsque ces différends sont du domaine du droit public ;

3. des réclamations pour violation de droits constitutionnels des citoyens, ainsi que des réclamations de particuliers pour violation de concordats ou de traités.

Sont réservées les contestations administratives, à déterminer par la législation fédérale.

Dans tous les cas prémentionnés, le tribunal fédéral appliquera les lois votées par l'assemblée fédérale et les arrêtés de cette assemblée qui ont une portée générale. Il se conformera également aux traités que l'assemblée fédérale aura ratifiés.

Article 114. Outre les cas mentionnés aux articles 110, 112 et 113, la législation fédérale peut placer d'autres affaires dans la compétence du tribunal fédéral; elle peut, en particulier, donner à ce tribunal des attributions ayant pour but d'assurer l'application uniforme des lois prévues à l'article 64.

V. DISPOSITIONS DIVERSES.

Article 115. Tout ce qui concerne le siège des autorités de la Confédération est l'objet de la législation fédérale.

Article 116. Les trois principales langues parlées en Suisse, l'allemand, le français et l'italien, sont langues nationales de la Confédération.

Article 117. Les fonctionnaires de la Confédération sont responsables de leur gestion. Une loi fédérale détermine ce qui tient à cette responsabilité.

CHAPITRE III.[1]

RÉVISION DE LA CONSTITUTION FÉDÉRALE.

Article 118. La constitution fédérale peut être révisée en tout temps, (totalement ou partiellement.)

Article 119. La révision (totale) a lieu dans les formes statuées pour la législation fédérale.

Article 120. Lorsqu'une section de l'assemblée fédérale décrète la révision (totale) de la constitution fédérale et que l'autre section n'y consent pas, ou bien lorsque cinquante mille citoyens suisses ayant droit de voter demandent la révision (totale), la question de savoir si la constitution fédérale droit être révisée est, dans l'un comme dans l'autre cas, soumise à la votation du peuple suisse, par oui ou par non.

Si, dans l'un ou dans l'autre de ces cas, la majorité des citoyens suisses prenant part à la votation se prononce pour l'affirmative, les deux conseils seront renouvelés, pour travailler à la révision.

[1] The parts of this chapter inclosed in brackets were added by the amendment of July 5, 1891.

(Article 121. La revision partielle peut avoir lieu, soit par la voie de l'initiative populaire, soit dans les formes statuées pour la législation fédérale.

L'initiative populaire consiste en une demande présentée par 50,000 citoyens suisses ayant le droit de vote et réclamant l'adoption d'un nouvel article constitutionnel ou l'abrogation ou la modification d'articles déterminés de la constitution en vigueur.

Si, par la voie de l'initiative populaire, plusieurs dispositions différentes sont présentées pour être revisées ou pour être introduites dans la constitution fédérale, chacune d'elles doit former l'objet d'une demande d'initiative distincte.

La demande d'initiative peut revêtir la forme d'une proposition conçue en termes généraux ou celle d'un projet rédigé de toutes pièces.

Lorsque la demande d'initiative est conçue en termes généraux les chambres fédérales, si elles l'approuvent, procéderont à la révision partielle dans le sens indiqué et en soumettront le projet à l'adoption ou au rejet du peuple et des cantons. Si, au contraire, elles ne l'approuvent pas, la question de la révision partielle sera soumise à la votation du peuple ; si la majorité des citoyens suisses prenant part à la votation se prononce pour l'affirmative, l'assemblée fédérale procédera à la révision en se conformant à la décision populaire.

Lorsque la demande revêt la forme d'un projet rédigé de toutes pièces et que l'assemblée fédérale lui donne son approbation, le projet sera soumis à l'adoption ou au rejet du peuple et des cantons. Si l'assemblée fédérale n'est pas d'accord, elle peut élaborer un projet distinct ou recommander au peuple le rejet du projet proposé et soumettre à la votation son contre-projet ou sa proposition de rejet en même temps que le projet émané de l'initiative populaire.)

(Article 122. Une loi fédérale déterminera les formalités à observer pour les demandes d'initiative populaire et les votations relatives à la révision de la constitution fédérale.)

Article 123. La constitution fédérale révisée (ou la partie révisée de la constitution) entre en vigueur lorsqu'elle a été acceptée par la majorité des citoyens suisses prenant part à la votation et par la majorité des états.

Pour établir la majorité des états, le vote d'un demi-canton est compté pour une demi-voix.

Le résultat de la votation populaire dans chaque canton est considéré comme le vote de l'état.

DISPOSITIONS TRANSITOIRES.

Article 1. Le produit des postes et des péages sera réparti sur les bases actuelles jusqu'à l'époque où la Confédération prendra effectivement à sa charge les dépenses militaires supportées jusqu'à ce jour par les cantons.

La législation fédérale pourvoira en outre à ce que la perte que pourraient entraîner dans leur ensemble les modifications resultant des articles 20, 30, 36, 2me alinéa, et 42 *e*, pour la fisc de certains cantons, ne frappe ceux-ci que graduellement et n'atteigne son chiffre total qu'après une periode transitoire de quelques années.

Les cantons qui n'auraient pas rempli, au moment où l'article 20 de la constitution entrera en vigueur, les obligations militaires qui leur sont imposées par l'ancienne constitution et les lois fédérales seront tenus de les exécuter à leurs propres frais.

Article 2. Les dispositions des lois fédérales, des concordats et des constitutions ou des lois cantonales contraires à la présente constitution cessent d'être en vigueur par le fait de l'adoption de celle-ci, ou de la promulgation des lois qu'elle prévoit.

Article 3. Les nouvelles dispositions concernant l'organisation et la compétence du tribunal fédéral n'entrent en vigueur qu'après la promulgation des lois fédérales y relatives.

Article 4. Un délai de cinq ans est accordé aux cantons pour introduire la gratuité de l'enseignement public primaire (article 27).

Article 5. Les personnes qui exercent une profession libérale et qui, avant la promulgation de la loi fédérale prévue à l'article 33, ont obtenu un certificat de capacite d'un canton ou d'une autorité concordataire représentant plusieurs cantons, peuvent exercer cette profession sur tout le territoire de la Confédération.

Article 6.[1] Si la loi fédérale prévue par l'article 32bis est mise en vigueur avant l'expiration de l'année 1890, les droits d'entrée perçus par les cantons sur les boissons spiritueuses, en conformité de l'article 32, seront abolis à partir de l'entrée en vigueur de cette loi.

Si, dans ce cas, les parts revenant à ces cantons ou communes sur la somme à répartir ne suffisaient pas à compenser les droits abolis

[1] Adopted Oct. 25, 1885.

calculés d'après la moyenne annuelle du produit net de ces droits pendant les années 1880 à 1884 inclusivement, le deficit des cantons ou communes constitués en perte sera couvert, jusqu'à la fin de 1890, sur la somme qui reviendrait aux autres cantons d'après le chiffre de leur population, et ce n'est qu'après ce prélèvement que le reste sera reparti à ceux-ci au prorata de leur population.

La législation fédérale pourvoira en outre à ce que la perte que pourrait entraîner l'application du présent arrêté pour le fisc des cantons ou des communes interessés ne les frappe que graduellement et n'atteigne son chiffre total qu'après une période transitoire jusqu'à 1895, les sommes à allouer dans ce but devant être prélevées sur les recettes nettes mentionnées à l'article 32bis, 4^{me} alinéa.

REMARQUE.

En conformité du premier alinéa de cet article 6 et de l'arrêté du conseil fédéral du 15 juillet 1887 concernant l'exécution successive des différentes parties de la loi fédérale sur les spiritueux, du 23 décembre 1886 (recueil officiel, nouv. série, tome X, pages 60 et 143), les droits d'entrée perçus par les cantons et par les communes sur les vins et les autres boissons spiritueuses en application de l'article 32 de la constitution fédérale sont abolis depuis le 1er septembre 1887. En conséquence, les articles 31, lettre *a*, et 32 de cette constitution sont abrogés en tant qu'ils se rapportent aux droits d'entrée sur les vins et les autres boissons spiritueuses.

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